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Jieun Park

The Public-Private Partnerships' impact on Transparency and Effectiveness in the EU Internet Content Regulation

The Case of “Network Enforcement Act (NetzDG)” in Germany

Schriftenreihe für Public und Nonprofit Management

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Erstgutachterin:

Prof. Dr. Isabella Proeller

Zweitgutachterin:

Prof. Dr. Sabine Kuhlmann

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Am Neuen Palais 10, 14469 Potsdam
Tel.: +49 (0)331 977 2533 / Fax: 2292
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Abstract

This master's thesis examined the internet content regulation in Germany from a perspective of Public-Private Partnerships. In the European Union, there has been a latest trend of initiatives aiming for combating illegal content online under the self-regulatory regime. Yet, concerns of this trend were that transparency cannot be ensured properly to safeguard the freedom of expression, and that the private intermediaries are not able to carry out effective regulation under the non-binding regulatory process. Due to these issues, Germany has legislated the Network Enforcement Act in 2017. This thesis used Mixed Methods within a Case Study Research, in order to identify the PPP type of the NetzDG, and to understand its link on transparency and effectiveness, as well as the relationship of these two dimensions. By taking an Exploratory Sequential Design, the German internet content regulation under the NetzDG was explored to understand its co-regulatory regime and to develop an instrument to measure the aspects of transparency and effectiveness. Then, the three big social media platforms, YouTube, Twitter, and Facebook, were examined according to the developed indicators. This thesis concluded as follow: First, the enactment of the NetzDG brought the shift of the regulatory paradigm from the self-regulatory to the co-regulatory. Yet, the actor-inclusive institutional arrangement of the NetzDG did not successfully result in the actual inclusion of actors in decision-making, but only improved the result transparency in the disclosure of take-down actions. Second, the level of effective regulation was not consistent across the three social media platforms under this regime. Despite these limitations, this study showed that the transparency and the effectiveness of the social media platforms' implementation gradually improved together, instead of having a negative correlation to one another.

Keywords: Internet Content Regulation, Network Enforcement Act, Transparency, Effectiveness, Public-Private Partnerships, Co-Regulation.

Zusammenfassung

Diese Masterarbeit untersucht die Regulierung von Internetinhalten in Deutschland aus der Sicht von Public-Private Partnerships. In der Europäischen Union hat es in letzter Zeit einen Trend zu Initiativen zur Bekämpfung illegaler Internetinhalte im Rahmen der Selbstregulierung gegeben. Jedoch besteht die Sorge, dass weder Transparenz richtig gewährleistet werden kann, um die Meinungsfreiheit zu schützen, noch dass es für Social Media Plattformen nicht möglich ist, die Regulierungen in einem unverbindlichen Selbstregulierungssystem effektiv durchzusetzen. Aufgrund dieser Probleme verabschiedete Deutschland 2017 das Netzwerkdurchsetzungsgesetz (NetzDG). Diese Masterarbeit nutzt einen Mixed Methods-Ansatz im Rahmen einer Fallstudie, um die Art von Public-Private Partnerships des NetzDG zu bestimmen und um ihre Verbindung zu Transparenz und Effektivität sowie deren Beziehung untereinander zu verstehen. Durch ein exploratives sequentielles Forschungsdesign wurde die deutsche Regulierung von Internetinhalten unter dem NetzDG untersucht, um das ko-regulierende System zu verstehen und um Instrumente zur Messung von Transparenz- und Effektivitätsaspekten zu entwickeln. Dabei wurden die drei großen Social Media Plattformen (YouTube, Twitter und Facebook) in Bezug auf die entwickelten Indikatoren analysiert. Basierend auf den Ergebnissen kommt diese Masterarbeit zu folgenden Schlüssen: Erstens, brachte das Inkrafttreten des NetzDGs einen Wandel des Regulierungsregimes von der Selbstregulierung zur Ko-Regulierung. Die akteurs-übergreifende institutionelle Ausgestaltung des NetzDG führte zwar zu keiner tatsächlichen Einbeziehung der Akteure in die Entscheidungsfindung, sondern hat lediglich die Ergebnistransparenz bei der Offenlegung von Take-down Handlungen verbessert. Zweitens war in den verglichenen drei Social Media Plattformen das Niveau der effektiven Regulierung nicht einheitlich. Trotz dieser Einschränkungen zeigt diese Studie, dass sich die Transparenz und die Effektivität der Umsetzung des NetzDGs durch die Social Media Plattformen gemeinsam sukzessive verbessert haben, statt in einem Trade-off Verhältnis zueinander zu stehen.

Schlüsselwörter: Regulierung von Internetinhalten, Netzwerkdurchsetzungsgesetz, Transparenz, Effektivität, Öffentlich-Privater-Partnerschaften, Ko-Regulierung.

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List of Abbreviations

2018 1H	First Half of 2018 (2018 2H...2019 2H)
AfD	Alternative für Deutschland
BfJ	Bundesamt für Justiz
BVDW	Bundesverband Digitale Wirtschaft e.V.
CCM	Constant Comparison Method
CDU	Christlich Demokratische Union Deutschland
CSU	Christlich-Soziale Union in Bayern e.V.
D1.1	Indicator 1.1 (D1.2...D2.4)
DsiN	Deutschland sicher im Netz e.V.
EU	European Union
FDP	Freie Demokratische Partei
FSM	Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V.
H1	Hypothesis 1 (H2, H3)
INGO	International Non-Governmental Organization
NetzDG	Netzwerkdurchsetzungsgesetz (Network Enforcement Act)
NGO	Non-Governmental Organization
NPM	New Public Management
PPP	Public-Private Partnerships
SRI	Self-Regulation Institution
UN	United Nations
US	United States

1 Introduction

In the beginning of the advancement of the internet network, it was represented with its neutral and open character, that enables the full extent of freedom in access and usage of internet service and information to all people without any type of control from states or operators (Mueller, Mathiason, and Hofmann 2007). Due to this character, the internet sphere was anticipated to promote citizen expression, creating new public space for free political discussion (Rheingold 1993; Papacharissi 2002).

However, Deibert and Crete-Nishihata (2012) argue that the internet had moved from “Open Commons”, in which the domain is separate from regulation or control, to “Controlled Access”, in which many forms of access restrictions are developed by the intervention of states. This movement does not only belong to authoritarian countries anymore, but also to industrialized and democratic countries. As more and more governments implemented regulatory measures afterwards, cyberspace is being nationalized in the current “Access Contested” phase (Deibert, Palfrey, and Rohozinski 2012). The OpenNet Initiative (ONI) had studied global trends of internet filtering since 2003. In the beginning, there were only a few governments that executed internet filtering. In 2006, they found evidence of filtering in 40 countries, mostly authoritarian countries, engaging in some form of the measures (Faris and Villeneuve 2008). However, the trend of internet regulation became dominant in Europe as well. EU countries have actively promoted filtering technologies, pressuring private intermediaries to voluntarily regulate online content (OpenNet Initiative 2010).

Internet content regulation is one of the major areas for internet regulation. It is a mechanism that takes down illegal online content, that is viewed as harmful to the public health and order, such as child pornography, neo-nazi content, racism, misused copyright content, and privacy (Breindl 2013). Internet content regulation has faced many criticisms and oppositions, in regards to democracy and the freedom of expression, which is the fundamental human right for the citizens in democratic societies. Freedom House also reported that the freedom in the internet is in endangered due to the growing trend of regulations, and democracy is losing its influence (Freedom House 2018).

The Charter of Fundamental Rights of the European Union (2000) stresses out the protection of freedom of expression. *“Everyone has the right to freedom of expression. This right shall include*

the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (Article 11 (1)).” Yet, the same charter also points out the exceptions, where the right to freedom of expression may be limited. The Article 52 (1) of the European Charter mentions that *“any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.”* Hence, the implementation of internet content regulation should not go beyond this framework.

In the European Union, the initial internet regulations used to be implemented solely by the hands of state. However, the governmental regulatory mechanisms had majorly changed into industry self-regulation (Feeley 1999). The recent EU initiatives on illegal content online, as well as other internet regulations, has started to delegate the responsibility of regulating tasks onto the hands of private intermediaries for the advantage of their resources and knowledge. A series of EU initiatives represents this trend, such as the E-commerce Directive in 2000 and Code of Conduct for Countering Hate Speech Online in 2016 (Quintel and Ullrich 2019; Schulz 2018).

However, the self-regulatory regime of the internet content regulation has been of a concern for the issue of transparency and effectiveness. The absence of public authorities in the regime can cause a potential threat to the fundamental human rights, in regard to the possibility of over-limiting the freedom of expression (Quintel and Ullrich 2019). The private operation process and the result are not transparent to the state and the public, either. Moreover, the issue of effectiveness has been also heavily contested, that the profit-driven private intermediaries do not wish to comply to their non-binding obligations and to endeavor for the effective actions (Ibid).

The rapid increase of incoming refugees in the EU had triggered the spread of hate speech online, which targets minority groups promoting hatred and violence. This phenomenon affected a disorder of deliberative discussion on the internet. Some of the EU national governments saw the need to replace the non-binding self-regulatory model of the EU Code of Conduct with their own national Act, which could include the role of the state, as well as non-profit organizations, to the regulatory governance (Ibid).

The German law, “Network Enforcement Act (NetzDG)”, is enacted as one of the responses to this demand. It was an attempt to change the internet content regulation regime into an inclusive public-private partnership model. The better involvement of public authorities aimed to be more proactive in monitoring and enforcing the private sector’s regulatory implementation. However, it has been questioned in various aspects, whether this system can bring about the improved outcomes (Schulz 2018; Tworek and Leerssen 2019). Although the implementation of NetzDG has been highlighted previously by a several scholars (Gollatz, Riedl, and Pohlmann 2018; Heldt 2019; Kasakowskij et al. 2020), there has not been any studies highlighting the organizational aspect of the PPP. In addition, there is so far no common instrument to measure the degree of transparency and effectiveness of internet content regulation.

Another question is whether the perceived dilemma between transparency and effectiveness is real. Börzel and Risse (2005) argue that the institutional arrangement of the public-private partnerships model may result in different level of transparency and effectiveness with a trade-off relationship to one another. The more inclusive the PPP form is, the more transparent and the less effective it becomes. Based on this framework, the research is proceeded to achieve the following purpose and objectives.

The overall purpose of this thesis is to understand the impact of the public-private partnership model in the EU internet content regulation, in the dimension of transparency and effectiveness of the private intermediaries’ implementation. As Germany has taken the first path legitimizing the law in the EU, this study will investigate the case of Germany during the period from 2018 to 2019 to achieve the following objectives:

- (1) To study the mechanism of the German internet content regulation, enforced by the NetzDG, in terms of the public-private partnership model;
- (2) To develop an instrument to measure the degree of transparency and effectiveness of internet content regulation; And utilizing it,
- (3) To assess transparency and effectiveness of the private intermediaries in the NetzDG implementation;
- (4) To identify the relationship between transparency and effectiveness.

The above objectives were met by answering the following research questions:

- (1) How is the German internet content regulation organized by the legislation of the NetzDG, in terms of the PPP settings?

(2) What impact does the inclusive PPP model of the NetzDG have on transparency and effectiveness of the private intermediaries?

(3) Do transparency and effectiveness have a negative relationship in the NetzDG implementation?

The next chapter provides a literature review on Public-Private Partnerships and the shift of EU regulatory paradigm in the area of internet content regulation. Afterwards, the research gaps are highlighted. In chapter three, the conceptual frameworks are outlined, in terms of the definition of the variables and the link of PPP types to the variables. Based on the frameworks, the hypotheses are generated. In chapter four, the research design of mixed methods within a case study research is illustrated with the case description. Here, the rationale of the methods, data collection, data analysis and operationalization are described. The qualitatively developed instrument is presented in the operationalization. In chapter five, the results of the analysis and the hypotheses testing are presented. In chapter six, the findings are discussed. Finally, the conclusion is drawn, summarizing the results and highlighting the implications for future internet regulations and future studies.

2 Literature Review

The shift of the internet sphere from the open commons to the more regulated and restricted has emerged internationally, including in the European countries (Deibert and Crete-Nishihata 2012). Along with this phenomenon, the regulatory model has been changed as well. This chapter introduces literatures on the rise of the EU internet content regulations in the perspective of public-private partnerships.

2.1 Public-Private Partnerships in the Internet Sector of the EU

For the last years, there have been a growing number of studies on the various forms of internet regulation within the European Union, in terms of Governance and Public-Private Partnerships. Before going into the internet sector, it is necessary to conceptualize Public-Private Partnerships, so-called “PPP”, and its application to the Regulatory Governance. In a broad definition, Public-Private Partnerships (PPP) mean a setting where the private actors cooperate with the public actors in the provision of public services (Linder and Rosenau 2000; Minow 2003 quoted in

Stelling 2014). According to the Oxford Handbook of Public Management, “*PPP in a generic sense to refer to the way in which government and private actors work together in pursuit of societal goals*” (Skelcher 2005, 348).

PPP has been indeed a popular concept throughout the last decades, but it is heavily contested and ambiguous in its conceptualization (Stelling 2014). Through the review on the definitions of PPPs, Stelling drew a broad and shared understanding: PPPs (1) are collective actions, (2) engage public and private actors, instead of sector-intercooperation, and (3) implement a task for public goals. These conditions help to distinguishing PPPs from other similar types of public-private settings, for example, full privatization, pure self-regulation, or any private alliances and networks between public actors.

Apart from the way to conceptualize PPP with a co-responsibility dimension as “*extensions of contracting-out*” (Bettignies and Ross 2004) and “*long-term contracts*” (Grimsey and Lewis 2002), PPP have been also understood from the relational governance dimension (Stelling 2004). In this dimension, the scholars focused on a joint and interactive relationship by a network mode of governance (Lowndes and Skelcher 1998). This perspective also can be found in the literature of Mayntz (2002, 21) describing governance in a narrow perspective, instead of strict hierarchical control of states: “*the type of regulation typical of the cooperative state, where state and non-state actors participate in mixed public/ private policy networks.*”. The literatures from Börzel and Risse (2005); Garcia Martinez et al. (2007) also identified PPP in the realm of governance, focusing on the co-creation of rules and norms between public and private actors.

In the topic of internet regulation, this regulatory paradigm has been actively studied. In the beginning, traditional state regulation mainly was prevalent, but it has moved towards the inclusion of non-public actors into the regulation regimes under the form of self- and co-regulation (Feeley 1999; Hirsch 2010; Marsden 2011; Brown 2010). Even though there are some extent of confusions on using the terms between self-regulation and co-regulation for specific EU initiatives, the literatures regarding the EU internet regulation uniformly agree that the regulatory paradigm had been changing from government regulation to a wider scope of governance, including industry and civil society actors.

What distinguishes the models of government regulation, self- and co-regulation is who the actors are that develop and enforce the regulatory goals and standards (Hirsch 2010). Hunt

(2018) identified the differences of each model as follows. Under a command-and-control or state or government regulation, public actors develop and implement the rules, and even punish those who are non-compliant. Under self-regulation, private actors from tech sector largely create the rules, as well as implement the rules without the intervention of public authorities. Co-regulation model locates in the middle of those two models. Under the initiation and oversight of the state, the responsibility of policy drafting, implementation and enforcement are shared between various public and private actors. Thus, it can be identified as Public-Private Partnerships, if the mechanism includes the role of public actors into the private regime of self-regulation model (Börzel and Risse 2005). Schulz and Held (2001) add the concept of regulated self-regulation under the narrower mode of co-regulation, as “*Self-regulation that fits in with a legal framework or has a basis laid down in law*” (p.6-7). In other words, the government sets the laws, and the self-regulation is done under this legal framework.

Feeley (1999) studied the triggers for the rise of self-regulation in the EU Internet arena. The EU used to have a broad governmental regulatory regime from 1991 to April 1997, concerning internet regulation. However, the EU experienced a vivid shift to self-regulation from September 1997. At that time, the EU established the European Internet Services Providers Association, which represents over 400 Internet intermediaries across the EU. The EU decided to fund this industry group, encouraging the system of self-regulation. Feeley argues that this shift happened from two causes. Firstly, the EU faced the need to respond to the Internet Report of the former U.S. President Clinton released in July 1997, regarding the engagement of industry in the internet regulation. Under this circumstance, the economic actors in the EU member states were concerned, if they will be in a disadvantaged position in the borderless internet free market. The proven success of the past self-regulation brought the optimism for the future of self-regulation in the EU.

However, self-regulation in the internet domain brought many criticisms on the issue of transparency, in regards to the online freedom of expression. Brown (2010) argues that self-regulation on the internet threatens the fundamental human rights to freedom of expression, freedom of association and privacy. For internet privacy laws and policies, Hirsch (2010) also argues that self-regulation not only raised a critical concern on the issue of transparency, but also the effectiveness of the mechanism. First, private firms as the main regulators would not put their profits down for the public goal. Therefore, this self-regulatory mechanism would lack

in transparency. Second, industry representatives would not be able to enforce the regulation to the industry without a sufficient power. In addition, the industry may not actively participate in the non-binding industry standard, since there are no sanctions.

Due to those drawbacks of self-regulation, the EU internet regulation has been moving forward to re-include the state, as well as non-profit organizations, aiming to ensure legitimacy, transparency, and accountability by taking the model of co-regulation. Co-regulation has been suggested as an alternative regulatory paradigm that can complement the self-regulation and state command-and-control regulation by sharing responsibilities between private and public actors (Schulz and Held 2001; Hirsch 2010; Marsden 2011). Hirsh (2010) points out the advantages of co-regulation that it is less one-sided, easy to make more creative solutions, while supporting private actors to prioritize public goals over their profit.

2.2 EU Initiatives on Internet Content Regulation for Combatting Illegal Content Online under the Self-Regulation Model

I am going to zoom in to “Internet Content Regulation” within the EU, which is a narrower policy area within the internet regulation, and where the appropriate PPP mix has been actively discussed. It is a mechanism that takes down or blocks the access to illegal online content, which is viewed to possibly harm the public health and order, such as child pornography, neo-Nazi content, racism, misused copyright content and etc. (Breindl 2013). It is sometimes referred as “Online/Internet Content Moderation” (Heldt 2019; (Gollatz, Riedl, and Pohlmann 2018; Heldt 2019; Tworek and Leerssen 2019).

The illegal contents are often intertwined with the issue of hate speech. With societal and technological changes, the trend of hate speech has been widespread. After the unprecedented inflow of refugees to Europe in 2015, the hate online content about refugees started to increase in the beginning of 2016 and onwards. This brought forth the concerns on the potential violation of the deliberative democracy. Davidson and his colleagues (2017) define hate speech as “*language that is used to expresses hatred towards a targeted group or is intended to be derogatory, to humiliate, or to insult the members of the group*” and “*in a way that could promote violence or social disorder*” (p.1). Dinar and her colleagues (2016) stated in the report from Amadeu Antonio Foundation that hate speech also contains disinformation, such as “*refugees exploit welfare systems*” (p.5). Extreme right-wing parties often use this strategy to

enhance their voice and support through social media platforms (Gollatz and Jenner 2018; Rasche and Dittrich 2019).

Quintel and Ullrich (2019) studied a series of EU initiatives that aimed at obligating online intermediaries for better control of the online discussion, and what criticism they had received. The European Commission has taken various policies, which were close to the pure self-regulation model with non-binding rules. The article 14 of the E-Commerce Directive in 2000 sets the first bases for content take-down (Ibid; Schulz 2018). In November 2008, the Council of the European Union published a Council Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal law. In the article 1(a), it defines hate speech as “*all conduct publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin.*”. Yet, this broad definition led to difficult judgements regarding the illegality of the content by different member states (Quintel and Ullrich 2019).

In May 2016, the European Commission published the Code of Conduct for Countering Hate Speech Online. Four big IT companies (Facebook, Twitter, YouTube and Microsoft) were demanded to implement the rules and define their own community guidelines in the pursuit of protecting the minority. Also, they agreed to review reports by users within 24 hours and remove or block the access to the ones judged as illegal. The companies needed to share information on the take-down procedures with the state authorities. This initiative was still constructed with the self-regulation model, but attempted to enlarge the voluntarily participation of civil societies, by appointing the “trusted flaggers” among civil society organizations. However, the Code of Conduct had several problems. First, users appeal mechanism was absent, when their content was removed or blocked. Also, there was a risk of over-blocking or over-removal, since the 24-hour-timeframe was too short to review the reports in-depth with the limited number of staffs. It could lead to the violation of freedom of expression and even the personal data protection. Another issue was that the companies did not need to forward the information to the state authorities, when the content is removed based on their own policies. Public authorities are only involved in limited occasions, and the published reports did not hold sufficient information for the evaluation (Ibid).

The following initiatives in 2017 and 2018 aimed to resolve the problems of self-regulation. The Communication on Tackling Illegal Content Online Towards an Enhance Responsibility of

Online Platforms puts the specific focus on enhancing transparency. It clarified more details on the possibility of appeal mechanisms and the prevention of over-removal. The Commission Recommendation on Measures Effectively Tackle Illegal Content Online still stayed on the self-regulatory model, but the measures were developed newly to improve the former weaknesses. The following Code of Practice on Online Disinformation recognizes various objectives noted in the previous Communication, such as the scrutiny of advertisement, fake accounts, fact-checking activities, data protection issues and so on. Compared to the Code of Conduct, it was more specific with the specific steps of implementation. Yet, it covered a more delicate area than before, which could trigger a higher level of violation to the freedom of expression. All of the initiatives did not solve much of the problems, since they were not binding, and the measures were ambiguous and opaque. Hence, the possibility of discretionary implementation of profit-driven companies could not bring the full level of trust for this dilemma between deliberative online discussion environment and the violation of fundamental human rights (Quintel and Ullrich 2019).

2.3 Adoption of Co-Regulation Models by National Legislations and Research Gaps

With the doubt on transparency and effectiveness of the pure self-regulation model, some EU member states attempted to regulate the content moderation activities of the private intermediaries with their national legislations. According to Quintel and Ullrich (2019), the UK, France and Germany initiated such actions against the rise of xenophobic, racist online content and terrorist threats online, that are triggered by the so-called “Refugee Crisis”. In the United Kingdom, the Parliamentary submitted the inquiry for the accountability of online platforms upon their online content. In France, the plan to speed up the legislation was announced for enhancing the social media’s role on the enforcement against illegal content online.

In Germany, “Network Enforcement Act (NetzDG)” was passed in October 2017. This German law is seen as the co-regulatory mechanism, that aimed for the joint governance across state, private firms and non-profit organizations. This attempt is to change the public-private partnership model into a better involvement of public authorities within the regulatory mechanism. It aimed to give more proactive responsibility to public bodies to track the removal procedures of private sector. However, it has been heavily questioned in various aspects,

whether this system would improve the outcome in regards to the effectiveness and transparency, ensuring the freedom of expression of users (Schulz 2018; Tworek and Leerssen 2019).

When the platforms have full power to judge the illegality of contents and take-down the contents without being monitored, there would be a possibility to violate the freedom of expression by over-removing non-illegal contents or simply not carrying out the responsibility properly. The exclusive role of private actors is often condemned for lack of transparency, but on the other hand defended for their expertise and resources. The expertise that private actors have gained in the field could serve as the advantage of their roles in the effective regulatory mechanism. It is the dilemma of the internet content regulation, that cannot be answered clearly yet. If the public authorities get involved with a better role within the regulation, would it contribute to having better transparency, as well as better effectiveness?

A few scholars shed the light on the assessment of the very early NetzDG's implementation. Gollatz, Riedl, and Pohlmann (2018) argues that the bare number of the transparency reports do not reveal much, but they still argue that this disclosure matters in bringing this issue into the attention of relevant actors and public. Yet, the law pushed the social media platforms to react faster to the complaint. Heldt (2019) agrees that the first transparency reports of the NetzDG were limited in their disclosure, and pays attention to the low implementation of complaint mechanism on the social media. Kasakowskij et al. (2020) note that Germany had taken down more content due to the NetzDG than the UK, Russia and Turkey. Nevertheless, there have not been any studies focusing on the regulatory model of the PPP for its impact on both the transparency and the effectiveness of the regime. Since literatures on the clear indicators and methods to measure the degree of transparency and effectiveness are still absent in this topic, there was no research done with a constructive evaluation, nor on the relationship between transparency and effectiveness.

3 Conceptual Framework and Hypotheses

In this chapter, the conceptual framework of this study is described. In the first step, the PPP types and their link to transparency and effectiveness are elaborated, which would be crucial to generate the hypotheses for answering the research questions. Afterwards, the conceptual

framework to the dependent variables are outlined, which are transparency and effectiveness. Based on these conceptualizations, the hypotheses are generated.

3.1 PPP Types and the Link to Transparency and Effectiveness

Linder and Rosenau (2000) argues that public-private partnerships are “the formation of cooperative relationships between government, profit-making firms, and non-profit private organizations to fulfil a policy function” (p.5). Börzel and Risse (2005) apply this definition of PPP to the level of institutionalized relationships that governments and international organizations have with private actors to cooperate for the purpose of transnational governance. They define the purposes of transnational governance that the creation and the implementation of rules and norms for producing goods and services in the international community.

Börzel and Risse (Ibid) identify various PPP types and non-PPP types, as well as their link to transparency and effectiveness. They distinguish various governance regimes based on two factors: the actors and the steering modes. PPP should fulfill the two conditions. First, public and private actors both should be involved in the mechanisms. Within the private actors, we can further distinguish between not-for-profit sector and for-profit sector. Private interest groups and private firms can be categorized as the actors in for-profit sector. For not-for-profit sector, international (and national) non-governmental organizations (NGOs) are the actors. Second, the modes of steering should be rather non-hierarchical through providing positive incentives, or using bargaining, or non-manipulative persuasion. Therefore, certain types of public-private interaction should be excluded from the definition of PPP, such as lobbying and mere advocacy activities done by non-state actors on the one end; self-coordination (markets), self-regulation among only private actors, unintended production of public goods and services on the other end of the spectrum (Ibid).

Börzel and Risse (Ibid) present four types of PPPs in the governance purpose: “self-regulation in the shadow of hierarchy”, “delegation”, “co-regulation”, and “cooptation” (p.6), as well as two non-PPPs: “*pure self-regulation*” and “*state regulation*” (**Figure 1**).

The first model is “*private self-regulation in the shadow of hierarchy*”, which invites public actors partially in the overall private regime. Public and private actors make voluntary agreements, in which private actors should act stricter according to the standards made. Under

this regime, private and public actors are involved together, even though the ratio of public autonomy is only limited. This model is different from the non-PPP model, “*pure self-regulation*”. Under this model, private actors act alone without a public involvement. Private actors take the most of roles in creating the rules, implementing the rules (Hunt 2018), without possibilities of sanction or monitoring from the state that can prohibit the private actors from pursuing their profits over the public goal (Hirsch 2010; Schulz 2001).

The second model is “*co-regulation of public and private actors*”, in which public and private actors share numerous tasks in rule-making, implementation and enforcement together. Yet, the state initiates the policy or public project, with taking the role of oversight (Hunt 2014). It is a model that represents the best harmony of private and public actors, locating in the middle of self-regulation and state regulation (Börzel and Risse 2005). The state will push the private actors to prioritize public interest over their profit-making. This system of accountability control will lead to better transparency. Both sides should act as joint problem solvers and setting the rules based on information sharing (Hirsch 2010). But the decreased autonomy of private actors could also result in the disruption of the performance effectiveness of the private actors, who were initially invited to the regime for their unique resources and knowledge (Börzel and Risse 2005).

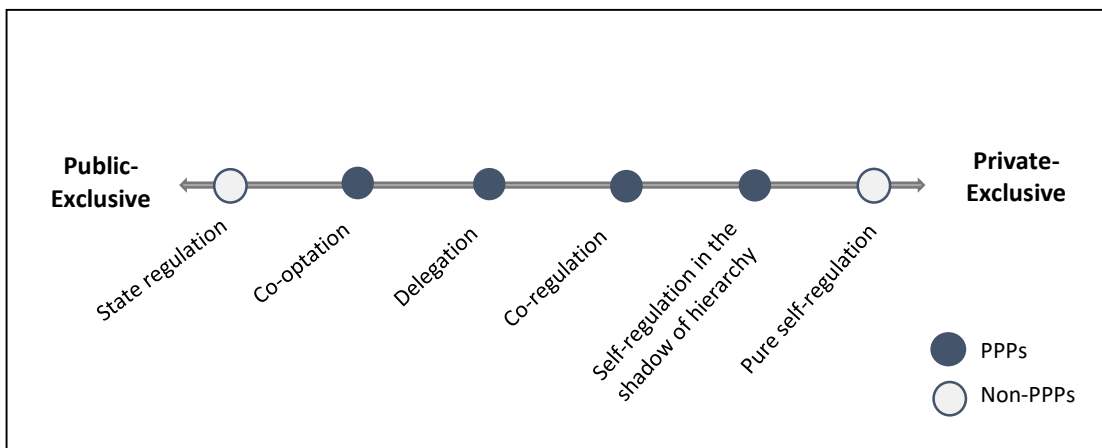
The third model is “*delegation of state functions to private actors*”, which is to “contract out” previous public services to private organizations for efficiency. In transnational relations, the EU and the UN contract out the public service provisions in the field of health care and humanitarian aid to private actors, such as INGOs, churches and other private organizations (Ibid). Private actors have smaller autonomy in creating rules. As they only implement or/ and provide services delegated by the state, the possible stretch of their attempt in decision making is limited.

The next model is “co-optation”, which is the most weak and common type of PPPs. Governments (and international organizations) choose private actors as official members in the regime. Within the regime, private actors take on the rule-setting and implementation responsibilities delegated by the state, and they provide their expertise, knowledge, as well as moral authority and legitimacy (ex. INGOs, such as Amnesty). It is often seen in international treaty-making, especially in the area of human rights and environment (Ibid). In the area of internet regulation, a government refers items of potential illegality to internet intermediaries

for their evaluation under their own terms of service. Therefore, the act of removal is not considered as the act of the state, although the state refers individual items to the private actors that the state concern as illegal (Land 2019, 300).

The last model is “*State regulation*”, in other words, “*command-and-control regulation*” or “*government regulation*”. Under this regime, public actors are the sole bodies that burden the most of tasks from developing, implementing, and enforcing the rules to even punishing the non-compliances. Therefore, this model cannot be categorized as PPP models, due to its exclusiveness of the roles of public actors within the mechanism. (Börzel and Risse 2005).

Figure 1 The Public and Private Partnerships Realm of Börzel and Risse (2005)



Previously, many scholars argued that inclusion of public and private actors in transnational governance regime would result in not only better democratic input-legitimacy, but also better problem-solving effectiveness (Bohman and Regh 1997; Scharpf 1997; Brühl et al. 2001 all quoted in Börzel and Risse 2005). However, Börzel and Risse (ibid) argue that it is not clear whether PPPs always do make a governance regime more legitimate, leading an absolute increase of effectiveness and transparency. Yet, it seems to depend on the conditions of the governance arrangements, mainly on the degree of inclusion between public and private actors. They argue that **the more inclusive the arrangement is, the more transparent and the less effective it may become. If the arrangement of the PPP is more exclusive (whether public- or private-oriented), the less transparent and the more effective it may become.** In other words, there might be a trade-off relationship between transparency and effectiveness.

3.2 Transparency

Grimmelikhuijsen and Meijer (2014) define transparency: “*Transparency is the availability of information about an organization or actor allowing external actors to monitor the internal workings or performance of that organization.*” (p.139). According to Fischer and Kraus (2020), transparency can be categorized into two ways by the direction of the information: vertical transparency and horizontal transparency. Vertical transparency is a level of openness between the actors within the hierarchy of an organization. Meanwhile, horizontal transparency is an external one, which allows an open flow of information and monitoring between organizations and citizens. There are various modes of transparency: Process and result transparency, retrospective and real-time transparency, passive and active transparency, and intended and unintended transparency.

In the context of internet regulation, process and result transparency in the horizontal direction are often highlighted. Result transparency refers to the openness of the outputs of political and administrative decisions. In the other word, the open delivery of information on “what” is done in the regime (Fischer and Kraus 2020). Disclosure of timely data to the public is promoted for improving transparency, but ensuring the freedom of expression requires more than this (Gollatz, Riedl, and Pohlmann 2018). Obligation of publishing transparency report does not always influence the transparent behavior of private intermediaries, since the organizations or individuals that publish the reports have some extent of control over the information that they reveal (Parsons 2019). In this regards, UN Human Rights Council (2018) provides guidelines. In addition to the disclosure of the aggregated data on the complaints number and reasons, the transparency reports should contain more detail about developments in the rule interpretation and implementation. Also, private intermediaries should develop a kind of case law system, which enable all stakeholders to understand how the private firms interpret and execute their standards, as well as hold a social media council to evaluate the implementation.

On the other hand, process transparency is about “how” the decision and action were made, inviting various relevant parties and stakeholders through negotiation, decision making and implementation processes (Fischer and Kraus 2020). Villeneuve (2006) highlights that the user take-down notice and given instructions for user appeal can be one of the measurements of transparency, since it allows users to know if the uploaded content is blocked and how to petition for unblocking, if it was a misjudgement of the platform. UN Human Rights Council (2018) also

provide guidelines in this regard, that private intermediaries, public authorities and civil societies should have an adequate communication, in terms of rule-makings, process, and assessment.

3.3 Effectiveness

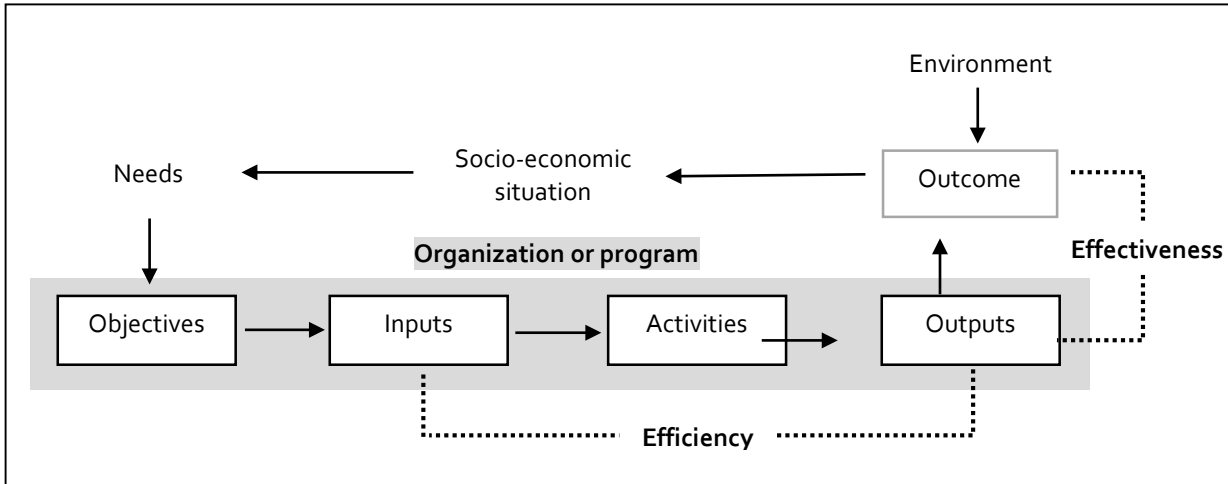
In New Public Management (NPM), the term Effectiveness is important to evaluate policies and programs of public administration. However, Effectiveness is often confused and used as efficiency. Pollitt and Bouckaert (2011) argue that efficiency and effectiveness have distinctive and specific meanings, even though they are often used vaguely or inconsistently in real-life. They differentiate effectiveness and efficiency: “*Efficiency is the ratio between inputs and outputs, whereas effectiveness is the degree to which the desired outcomes result from the outputs.*” (p.15). In other words, effectiveness is how far implemented performance of the policy or program has achieved its original goals, or solved out the targeted problems (problem-solving effectiveness).

Pollitt and Bouckaert introduce a conceptual framework on policymaking performance with the assumption that each policymaking is a purposive activity and that particular policies can be assessed (**Figure 2**). The model can be used in various different scales from macro to meso and micro level. If it is deployed at the macro scale, the unit of analysis would be the entire system of public administration. For micro level, the model can be applied to individuals, small groups or teams as the unit of analysis. Yet, this model is more commonly applied at a meso scale like programs or individual institutions or organizations, such as health care as “a program” and a police force or self-regulatory agency as “an institution/organization”.

The model assumes that specific socio-economic situation creates *needs* that affect to set up *institutions* and/or *programs*. Concerning the needs, the organizations or programs establish *objectives*, and obtain *inputs* (resources, budget, office, staff) that are required to implement *activities* in order to achieve those objectives. Then the process starts with the activities taking place within the programs or the institutions, in pursuit of generating *outputs*. After the activities have taken place, the outputs are produced and delivered to the outside world of the programs or the institutions. The groups and the individuals that the objectives are aimed at are the environment. In the environment, the outputs interact with the targeted groups, and it influences the intermediate and final outcomes. In the case of education, for example, the activities are

teaching in an educational institution, and the outputs are academic qualifications or school reports. The outputs can be the improved academic competence and the employment rate.

Figure 2 Policymaking model of Pollitt and Boukaert (2011)



Pollitt and Boukaert (Ibid) pointed out some challenges in the usage of this model to identify results of programs or institutions. First, policy does not often express its objectives in a precise and clear way. Second, efficiency and effectiveness do not always improve together. Third, choosing what to measure or not to measure is critical for the performance assessment. Fourth, the change of outcomes cannot be always understood as the result of the program or organization. Fifth, it is hard to compare outputs or outcomes between before and after the program started, if there were modifications in the organization of program or the measurement of the results. Therefore, the researcher has to put extra care on these challenges and difficulties in the assessment of results, especially in the danger of missing weak performance and over-evaluating strong performance of the model.

A direct measurement of effectiveness is challenging as well, Thompson (2010) argues that proxy measures of effectiveness are often used, in order to overcome the difficulties to directly measure the effectiveness of public services. These proxy variables should be closely linked to the ultimate purpose of public service, which aims to affect the users or citizens. It indicates the importance of accurate understanding in the ultimate purpose of the focused policy or program.

In the area of internet content regulation, there were not yet any specific measures suggested. Gollatz, Riedl, and Pohlmann (2018) argue that the case-by-case determination enables to see how the German law “NetzDG” affects the current internet content regulation system. They

stress how user behavior is affected by the law. On the other hand, Heldt (2019) highlights that the NetzDG targets the private intermediaries, not the users, to react in-time by taking down the reported illegal contents, as well as requiring them to take up easy and effective usability in their complaint procedure. In order to study the impact of the NetzDG law on the effective regulation, measures should be deliberately developed, understanding the ultimate purpose and the activities of the NetzDG.

3.4 Application of the Framework and Generation of Hypotheses

The literatures above deliver groundworks to define what transparency and effectiveness means in the context of internet regulation, and gives understanding of how these two matters may be affected according to the different mix of public and private actors within the specific PPP models. Considering the modernity of the topic of internet regulation, the empirical study in this sector is rarely done. Thanks to the literature of Börzel and Risse (2005) about the various regulatory types of PPP in transnational governance and their links to transparency and effectiveness, this thesis takes their argument to apply it to the level of domestic governance in the realm of internet content regulation.

Although Börzel and Risse (Ibid) pays attention to the whole policy/ program level, this thesis pays attention to the transparency and the effectiveness of the private actors (organization perspective). The legitimization of this design is further explained in chapter 4.2. Here I have created the hypotheses as follows (**Figure 3**).

The selective participation of private actors worsens the problems of democratic legitimacy. It may contribute to commercialization, since private actors may not put the public interest first over the profit-making goal. Therefore, it is assumed that a PPP form with an inclusive institutional arrangement between private and public actors may prohibit this phenomenon, resulting in high transparency (Börzel and Risse 2005).

Hypothesis 1: A PPP model of inclusive institutional arrangement between public and private actors will result in high transparency of private intermediaries in the internet content regulation mechanism.

However, effectiveness might have the opposite effect. The involvement of private actors helps the identification of possible solutions towards problems by delivering expert knowledge and

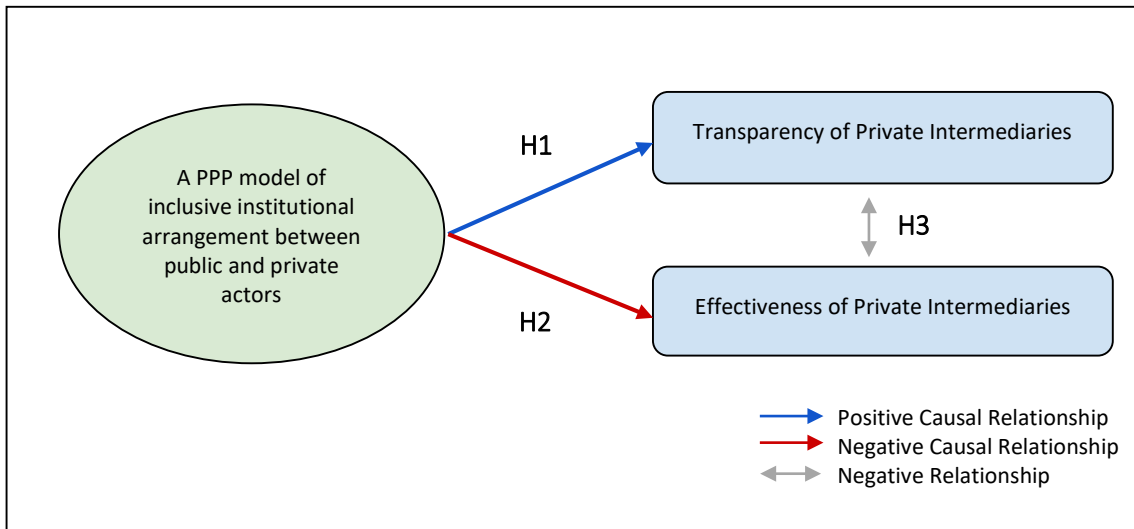
resources. Therefore, an inclusive institutional arrangement may weaken this strength of private actors, and ultimately result in low effectiveness. In this way, the problem-solving effectiveness of the internet content regulation is assumed to be low (Ibid).

Hypothesis 2: A PPP model of inclusive institutional arrangement between public and private actors will result in low effectiveness of private intermediaries in the internet content regulation mechanism.

Furthermore, it is assumed that transparency and effectiveness under the PPP regime have a trade-off relationship (Ibid), that the surplus of one aspect entails the sacrifice of the other. I limit this relationship as a negative correlation, as it is not the objective of this study to identify the direction of causal inference.

Hypothesis 3: There is a negative correlation between Transparency and Effectiveness in the internet content regulation mechanism.

Figure 3 Visualization of the Hypotheses



4 Research Design

This chapter describes the research design of mixed methods within a case study research, as well as the in-depth case description. The first part provides the rationale of mixed methods within a case study research with the introduction of the units of analysis. The second part describes the latest German law “NetzDG” in the area of content regulation of illegal content

online. This part will deliver the description on how the PPP of the NetzDG is organized, in terms of the activities of each actor and the goals of the NetzDG. Then, data collection and analysis methods will be illustrated. Lastly, the operationalization process will be followed, as well as the developed indicators for the measurement of the variables.

4.1 Rationale of Mixed Methods within a Case Study Research

A case study is an intensive study of a single (or a few) unit to generalize across a larger unit of the population (Gerring 2004). In other words, a case study is suitable to be used, when the researcher aims to study a single case in depth with an aim to understand other unstudied cases by the findings of the study. The rationale for this argument is that *“the single case can represent the critical test of a significant theory or propositions”* (Yin 2014, 51).

On the other hand, mixed methods research is a *“type of research in which a researcher combines elements of qualitative and quantitative research approaches (e.g., use of qualitative and quantitative viewpoints, data collection, analysis, inference techniques) for the broad purposes of breadth and depth of understanding and corroboration.”* (R. B. Johnson, Onwuegbuzie, and Turner 2007, 123) within a single study. Particularly, I took on an *exploratory sequential design*, in which a researcher first explores the topic with qualitative methods for developing quantitative instrument to measure variables (Creswell 2014, 6). Yin (2014) also introduces a form of embedded case studies that rely on strategies of holistic data collection for studying the main single case and then implement other quantitative techniques to study the embedded units of analysis within the main case. It enables researchers to collect various evidences that enrich the analysis in the pursuit of addressing more complicated research questions.

Hence, I choose mixed methods within a case study research design with the following reasons: first, the internet content regulation is a rising trend of internet regulation, and only a few countries started or considers to legitimize the public role within the mechanisms so far. Thus, the study of large-N analysis is not possible. Rather, it is suitable to carry out in-depth analysis in a single case that may represent other upcoming cases in the future by testing theoretical propositions. Second, the nature of the topic touches on complicated issues like freedom of expression, social responsibility and state sanctions. The behavior of private intermediaries and

the effect of the regulatory mechanism should be understood with multiple approaches that can collect and analyze a various array of data, not only qualitatively, but also quantitatively.

4.2 Case Selection: “Network Enforcement Act (NetzDG)” in Germany

In order to understand the mechanism of EU internet regulation under a co-regulation regime and with the dimensions of transparency and effectiveness, I select the case of Germany, “NetzDG” as a “typical case”. The typical case study pays attention to a case that can be representative of some phenomenon, in order to confirm or disconfirm the previous theory or existing research (Seawright and Gerring 2008). Before any other EU countries, Germany has legitimized the internet regulation to combat against the hateful content online by facilitating the enforcement on the behavior of internet intermediaries. Since the NetzDG is enacted to enhance the inclusion of public authorities within the private regulation, this case can highlight the typical circumstance. And the research can investigate whether this setting contributes to the level of transparency and effectiveness of the platform regulation, as well as whether the two dimensions have a negative relationship.

Within the single case study of German internet content regulation, I conduct the embedded units of analysis. Private intermediaries, also known as social media platforms, have been the main implementers of the internet content regulation even in the EU initiatives on illegal content online before the enactment of the NetzDG. The focus of the NetzDG is to improve the quality of the platform behaviors in the responsibility of content regulation. Therefore, I choose to focus on private intermediaries.

The NetzDG is only applied to the social media platforms that fulfil the three criteria: (a) if the purpose of the platform is not to offer editorial or journalistic content (Section 1, Article 1); (b) if the number of registered users is more than two million (Section 1, Article 2); (c) if the number of received complaints is more than 100 (Section 2, Article 1). Only YouTube, Twitter, and Facebook have met all of the criteria since the beginning of the act in force till the end of 2019. Therefore, I narrow down the units of analysis to these three social media platforms as the three embedded units that comprise the case.

4.2.1 Brief Background of the NetzDG

After the historical xenophobic experience during the world war, Germany defines freedom of expression with regard to the protection of the inviolability of personal dignity and the youth in the Basic Law (Grundgesetz) of 1945 (Breindl and Kuellmer 2013). This can be seen in the article 1 and 5. Article 1 (1) says that *“Human dignity shall be inviolable.”* Article 5 (1) clearly find the legitimacy of freedom of expression to all people by saying: *“Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures and to inform himself without hindrance from generally accessible sources. (...) There shall be no censorship.* Yet, Article 5(2) says that this right can be limited if it damages the Article 1: *“These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons and in the right to personal honour.”* Therefore, any expression with Nazi propaganda, Holocaust denial, racism, child pornography, extreme violence, and hate speech are regulated by the German government under the German criminal code (Heller and van Hoboken, 2019).

However, online discrimination towards ethnic minorities has rapidly increased with the wave of refugees from Syria entering Germany and other European Countries in 2015-2016. These contain hateful content, disinformation and fake news, which could potentially disrupt the healthy online communication and provoke racism among internet users. Although the Code of Conduct on Countering Illegal Hate Speech Online was already initiated in 2016 by the European Commission, it did not result in the satisfactory compliance of internet intermediaries. As it is mentioned earlier in chapter 2, this code of conduct was based on the self-regulatory mechanism to convince the industry to voluntarily take up the measures, without the national law (Schulz 2018).

Due to the failure of the previous EU initiatives, the big tech companies could not be trusted for their social responsibility in their own content regulation. Their transparency and the effectiveness of the measure were both in question. With the fears towards hate speech and fake news potentially influencing the Bundestag election in 2017, the German government passed a draft of “Network Enforcement Act (Netzwerkdurchsetzungsgesetz – NetzDG). This law came into force on the 1st of October, 2017 and it has been applicable since the 1st of January 2018 (Schulz 2018). Internet content regulation could cause the over removal of internet content, which could lead to the violation to the fundamental human right. Therefore, the NetzDG has

received plenty of attention from inside and outside of Germany (Schulz 2018; Heldt 2019). The FDP, which is the liberal party in Germany, criticized that the law had violated the constitution. The AfD, the radical right party, sued the German Government in November of 2018 for a repeal of the NetzDG (Tworek and Leerssen 2019).

4.2.2 PPP Settings and Activities of the NetzDG

The targets of NetzDG are big private intermediaries which operate social media platforms designed to enable online communication of users. Therefore, this law is not directly aimed at the users, who are the speakers and uploaders of the content, but the operators of the digital platform with the responsibility to regulate the cyber environment.

The definition of “illegal content” is not elaborated within this law. But it only refers to existing criminal offences under the German Criminal Code (NetzDG Section 1, Article 3). The listed offences include an intentional defamation, insult, incitement to hatred, terrorism, violence, symbols of unconstitutional organizations, child pornography, discrimination of religion, violation of privacy by photographs, criminal threatening, and data forgery (Tworek and Leerssen 2019).

The private intermediaries should provide a user-friendly procedure of complaint submission (NetzDG Section 3, Article 1). Any contents containing the manifested illegality should be deleted or blocked by the social media platforms within 24 hours of receiving the report of complaint, or within 7 days in case of an agreement with the law enforcement authority. The 7-day time limit may only be exceeded when the decision needs more time to judge the factual circumstances from the further response of the user, or when the decision has to go through a consultation with a self-regulation institution (NetzDG Section 3, Article 2). With some exceptions, mostly decisions are made by the private intermediaries without an involvement of public authorities or courts (Kasakowskij et al 2020).

Furthermore, the private intermediaries should publish a biannual transparency report on their regulation process and results: the number of complaints received and the source (authorities or users), the number of content removal and blocking, the reason of complaint, the turnaround time, take-down-notice mechanism, NetzDG team resources and employees, the complaint mechanism, the cooperation with external bodies, and etc (NetzDG Section 2). For the non-

compliance of the obligations, the private intermediaries should be fined up to €50 million (NetzDG Regulatory Fining Guidelines 2018).

What distinguishes NetzDG from the previous EU Code of Conduct for hate speech online can be found not only in the legal framework with enforcement, but also in the cooperative mechanism with external bodies outside of the private intermediaries. **Table 1** shows the four main actor categories in this internet content regulation mechanism. Private intermediaries providing online platform services, public authorities, self-regulatory institutions, and users. Except users who upload content and submit complaints, the rest of the organizational actors can be divided between public and private actors.

Table 1 Public and Private Actors of NetzDG and the Activities

		Institutions	Activities
Public Authorities ¹		The Federal Office of Justice (Directorate VIII)	- monitors the procedure of the platform - issues a non-compliance case based on the obtainment of a judicial decision on unlawfulness - provide a recognition of self-regulation institution based on their fulfillment of recognition conditions
			Sub-body: The Regulatory Fine Authority exercises of discretion in initiating regulatory fine proceedings and calculation the fine
Private Actors	Profit	Private Intermediaries (social media platforms)	- receive complaints from user and agencies - remove the content or block the access within 24 hours or 7 days exceptions - train the employees responsible for content moderation - fund the self-regulation institution
	Non-Profit	Self-Regulation Institutions (Industry Associations or independent self-regulation agencies)	- provide take-down decisions for the referred cases - represent members of platforms and accept new admissions of further platform providers - set up a complaint service with 7-days decision process

¹Additional public authorities: The Federal Ministry of the Interior/ the Federal Ministry for Economic Affairs and Energy are to agree with the proceedings of the regulation, and the Federal Ministry of Justice and Consumer Protection is to issue general administrative principles

Based on the NetzDG Regulatory Fining Guidelines (2018), the Federal Office of Justice is the main actor that exercise the duty-bound discretion of the administrative authority within public actors. The Directorate VIII is in charge of this function (BfJ n.d.). Their responsibilities include monitoring the procedure of the platform implementation of the NetzDG, deciding whether and to what extent the regulatory offence is prosecuted based on a judicial decision, and rendering a recognition of self-regulation institution based on their fulfillment of recognition conditions. The Regulatory Fine Authority under the Federal Office of Justice initiates the regulatory fine proceedings and calculates the fine amount. The Federal Ministry of the Interior and the Federal Ministry for Economic Affairs and Energy have to agree with the proceedings of the regulation. Furthermore, the Federal Ministry of Justice and Consumer Protection joins the mechanism by issuing the general administrative principles.

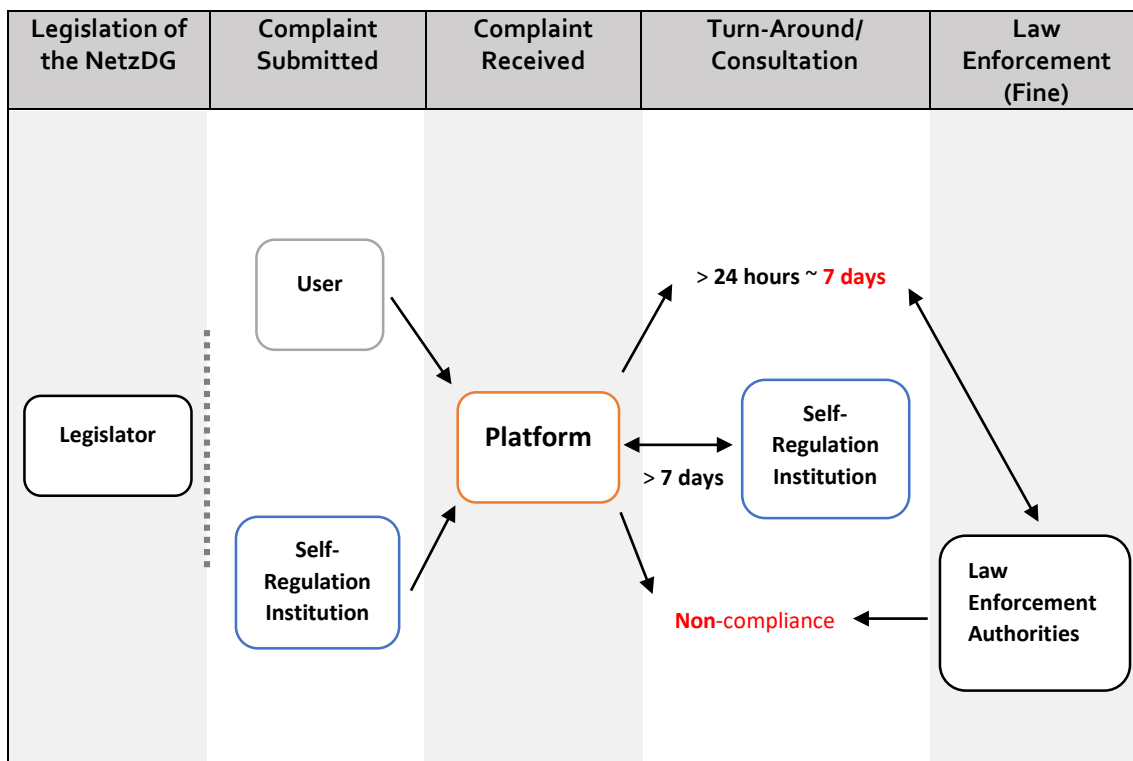
Private actors are mainly two groups: self-regulation institutions (non-profit), and private intermediaries (for profit). There are industry associations affiliated by the private intermediaries, that represent the member companies. Only the ones that fulfill the conditions of capacity in the internet content regulation get recognized by the public authority as the self-regulation institutions, such as Bitkom e.V., eco e.V.. Yet, there are other self-regulation institutions that are not the industry associations, but provide the complaint service with take-down decision competencies: Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V. (FSM), Deutschland sicher im Netz e.V. (DsiN), Jugendschutz.net.² The self-regulation institutions should provide their own service of complaint, and should be equipped with competencies to evaluate illegality of the content within 7 days.

Figure 4 shows the process of the internet content regulation in Germany, which starts with the legislation of the NetzDG. The NetzDG stipulates the obligations of the platforms and law enforcement upon the cases of non-compliance. Platforms need to respond to the complaints submitted by users and agencies (self-regulation institutions). Platforms should take an appropriate action within 24 hours, or 7 days if they made an agreement with a law enforcement authority. When the platforms refer the decision to a self-regulation institution for their evaluation, the turnaround time may take longer than 7 days.

²The names of the self-regulation institutions are identified from the all transparency reports from the social media platforms. See Appendix B.

But the platform should accept the decisions of the self-regulation institution. During this decision making, the platforms should notify the uploaders and the submitters of the relevant content about the decision and the reason. If the decision is dependent on factual circumstances, the platform can let the uploader to respond to the complaint (NetzDG Section 3, Article 2). In case the platform fails to respond to its obligations of the law, the law enforcement authority sentences the platform with regulatory fines. Users can also report non-compliance cases of the platforms to the authorities.

Figure 4 Process of the NetzDG (The Platform-Oriented View)



Therefore, I categorize the German internet content regulation under the NetzDG as the *co-regulation model of public and private actors* from the taken conceptual framework. As it is described earlier in chapter 3, it is a PPP type that public and private actors share numerous tasks in rule making, implementation and enforcement (Börzel and Risse 2005). First, the state enacts the law and oversees the regulation process done by the industry. This model can be described as “regulated self-regulation” as well, which is a unique regulatory governance structure in Germany. This model provides a practical method for dealing with the problem of internet

(content) regulation (Schulz and Held 2001), by providing the legal framework for the enforcement on the self-regulation of platforms. Another feature of enhancing the co-regulatory mechanism is that public authorities and self-regulation institutions are also to be involved in the implementation process through agreement and consultation. The platform providers are to be systematically guided by the law and to hear and communicate with all the relevant actors (public and non-profit) for decision makings.

4.2.3 Goals of the NetzDG

The NetzDG aims to obligate private intermediaries to transparently and effectively take their responsibility in the take-downs of illegal content online. For this aim, the **activities** in chapter 4.2.2 were designed to result in the outputs. The aiming **outputs** are the illegal content take-down actions, with biannual transparency reports that disclose the concrete information on the implementation process and the results produced by each platform (Heldt 2019).

The broad aim of internet content regulation may be the safeguarding of deliberative and safe online discussion, protecting the fundamental human rights of freedom of expression. Yet, this is realistically not feasible to measure, due to the immensity of the internet sphere with other various factors that might also affect the online discussion. Most importantly, the NetzDG targets mainly the social media platforms, not the users. Thus, it is required to take this into account for identifying the **ultimate outcome**: social media platforms are to be more responsible in their take-down measures to remove illegal contents on their platforms, ensuring the horizontal transparency of their results and process. This will be the criteria of deciding the proxy variables.

4.3 Data Collection

I collect data which portray the impact of the PPP type of the German internet content regulation on the dimensions of transparency and effectiveness across each private intermediary. Yin (2014) encourages researchers to use multiple sources of evidence. I use various sources of documentation, archival records, and visual artifacts as the data sources for a mixed methods analysis.

According to Bowen (2009), documentation analysis is a systematic procedure for evaluating and reviewing evidences in a documentation format. The collected data are Network Enforcement Act (Netzwerkdurchsetzungsgesetz), NetzDG Regulatory Fining Guidelines, and newspaper articles. I also collect NetzDG Transparency Reports published by YouTube, Twitter, and Facebook in the Federal Gazette and on their own website. This data can be considered as archival records (Yin 2014), since they are available online for publicizing the statistical data by the platforms. Physical artifact serves another meaningful evidence for broad observation to the case, providing insights into the technical operations within the organizations (Ibid). Website interface features can act as visual artifacts, instead of physical artifacts. Thus, I observe the three platforms' user interface structure of the NetzDG complaint system as visual artifacts.

I collect data created from January of 2018 to December of 2019 at an interval of 6 months, since the platforms are obligated to publish their biannual transparency report every half year. The reason of collecting longitudinal data is because the observation of consistent data trend is beneficial for strengthening the internal validity (Gibbert and Ruigrok 2010). In addition, the 12 sets of observations from the three platform enhances the external validity by helping the generalizability of **H3** result, because each observation acts as an individual case for testing the hypothesis (ibid). Yet, it is not possible to check if the platform interface is changed throughout this time, but only the current interface structure. Therefore, only the cross-sectional data is collected in the period of February 01 to May 01, 2020 for this variable, with the assumption that it did not change from 2018 and 2019. This data is not considered for the **H1** nor **H3**, but only **H2** (see **Table 3**).

4.4 Data Analysis

I used the general analysis strategy of *relying on the theoretical proposition* (Yin 2014). This strategy lets the researcher to shape the data collection plan with analytic priorities, as well as help forming the groundwork for an analytic generalization. Repeating the content of chapter 3.3. again, the framework of Börzel and Risse (2005) highlights the aspects of the inclusive institutional arrangement within the various PPP types and how it affects to the dynamics of transparency and effectiveness. I created three hypotheses (**H1**, **H2** and **H3**. See **Figure 4**) based on this framework.

In order to develop an measurement instrument for the variables, I use “Constant Comparison Method (CCM)” illustrated by Memon, Umrani, and Pathan (2017). CCM is a method of qualitative data analysis combining inductive category codes, while a researcher simultaneously compares the unit of data (Maykut and Morehouse 1994). This initial explorative analysis contributes to the following observations of the relevant data in diverse forms.

After the development of the instrument, I use the qualitative analytic technique: *pattern matching technique*, which pursue the similar finding of predicted patterns and it helps strengthen the internal validity of a case study (Yin 2014). With the pattern matching technique, I aim to find patterns related to transparency and effectiveness of the platforms as dependent variables, in order to test the **H1** and **H2**. The developed indicators help the observation of the patterns, whether the patterns are similar between the units. The measurement of the indicators includes the observation to both qualitative and quantitative data, depending on the nature of each indicator. According to the theoretical proposition, the units are predicted to have a similar level of high transparency and a similar level of low effectiveness across the units.

In order to test **H3**, I use a quantitative hypothesis-testing approach, *Spearman Rank Correlation Analysis* (Spearman 1904), in order to study the relationship between the two variables. Since this study used ordinal scale to evaluate the variables, the difference in the values do not mean the proportionality or the degree of the nature. Spearman’s rank correlation analysis enables the analysis between two variables with ordinal scales by comparing the ranked values (Field, Miles, and Field 2012).

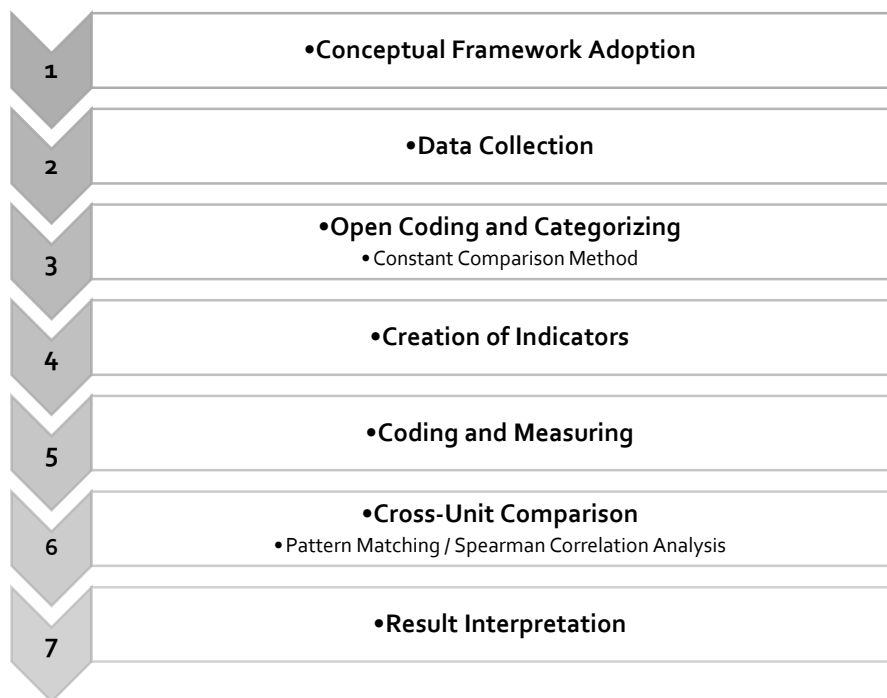
4.5 Operationalization

Figure 5 shows the steps of the operationalization that I pass through. In order to develop the measurement, defining the meaning of the variables is important (1. Conceptual framework adoption).

Taking the framework of Fischer and Kraus (2020) on the direction and the mode of transparency, I define “transparency” of the private intermediaries as the horizontal transparency with other actors outside of the platform providers, in terms of (a) disclosure of the results of NetzDG and (b) interactions for the decision-making process. According to Pollitt and Bouckaert (2011, 15), effectiveness is how far implemented performance of the policy or

program has achieved its original goals, or solved out the targeted problems. Therefore, I define “effectiveness” in this research as “how far the outputs of NetzDG from the private intermediaries, who are the main implementors within this co-regulation regime, have reached to the full achievement of the desired outcome”. For the difficulties of assessing the direct effectiveness, I use proxy measures that are closely linked to the ultimate purpose of public service (Thompson 2010). Taking into account what the NetzDG aims, the effectiveness should consider (a) the level of compliance to the law in the take-down actions and (b) the efforts of the platform providers to impact the user awareness and reporting behavior. This adopted conceptual framework on transparency and effectiveness sets the groundwork of the indicators.

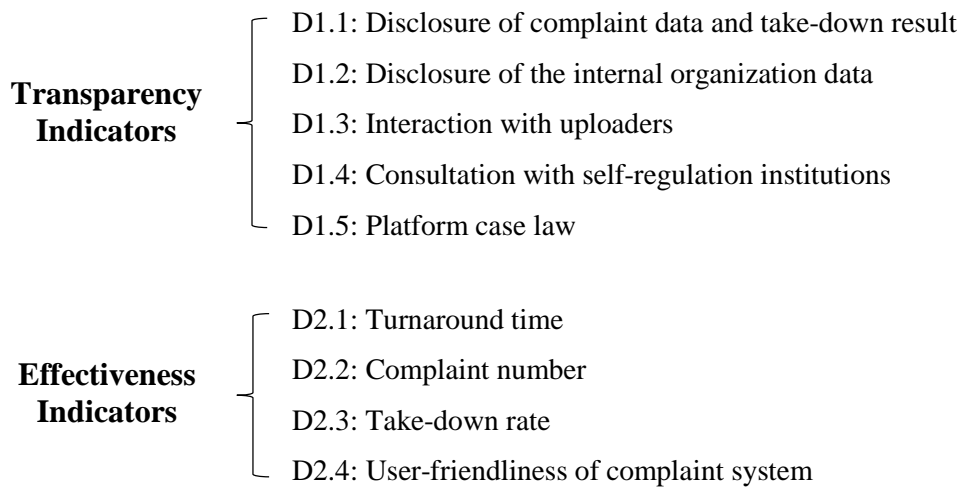
Figure 5 The Operationalization Steps



Then, I collect all relevant data from various sources (2. Data collection). Using a software MAXQDA, I execute an (3. Open coding and Categorizing) on some broad portion of the collected data first, in order to develop indicators that enable the measurement of the variables. In this step, I use a CCM as it is already described earlier in chapter 4.4. It is an inductive process of developing broad categories and codes, as well as sorting, connecting, and aggregate data for each code. I keep on refining and grouping the similar categories, until it reaches to the stage of

(4. Creation of indicators), in which I end the process of developing indicators. The third and the fourth stages do not have a precise boundary to one another, as they are intertwined closely and I need to repeat the process back and forth until the indicators are completely set.

The following indicators are the result of this analysis. It is the final synthesis of the conceptual and empirical indicators, which serves as “patterns” (or “codes”) to evaluate the dimensions of transparency and effectiveness (see **Appendix A. Coding Scheme**). The indicators are to be assessed with qualitative or quantitative measures, depending on the conditions of each variable.



Then, I execute (5. Coding and Measuring). During the process, the criteria of measurement are also developed accordingly, repeating the process of modification based on the different nature of the indicators. I use ordinal scales to evaluate each indicator for the two dimensions of transparency and effectiveness from 0 to 2 (Johnson and Joslyn 1995). Generally, the value 0 means the absence or significantly low value of the observation to the indicator. The value 1 means the observed value is only limited or moderate. The value 2 means the high value of the item is observed. The specific measurement criteria adapted for each indicator are presented in **Appendix A.3**.

Then, the level of indicators and indexes (the total sum of indicators’ values) are compared across the units (6. Cross-Unit Comparison). The focus is on whether the patterns of observations across the platforms are similar or not, and what is the relationship between the variables. According to **H2** and **H3**, the transparency indicators are expected to be high in value, while the effectiveness indicators are expected to be low in value. For **H3**, the final indexes are compared to see whether there is a negative correlation between transparency and effectiveness.

With the evaluated indexes, I use Microsoft Office Excel to calculate Spearman's coefficient. In the last stage of (7. Result Interpretation), I check the results with the hypotheses, whether the results approve them or provides alternative explanations.

4.6 Limitations to the Research Design

Some limitations of the research design should be clarified. First, the unavailability of the data before the NetzDG limits the investigation of the impact of the changed regulatory model. It would have been helpful to compare the data before and after the enactment of the NetzDG. However, the fact that the platform providers did not publish comparable data before the NetzDG symbolizes itself the lower result transparency. In addition, this limitation is complemented by observing the pattern consistency instead. The longitudinal data published over the 2 years at an interval of 6 months is collected. Second, the design may contain a problem that each set of observations act as an individual case for testing **H3**. Since the 12 sets are analyzed uniformly, not taking into account other factors like actor and time. This limitation is hard to be overcome, but this design can also serve as an advantage by strengthening the external validity in generalization of the result by having a greater number of cases (Gibbert and Ruigrok 2010). Third, the nature of the ordinal scales may result in errors in the logical inference (Merbitz, Morris, and Grip 1989). Unlike interval and ratio scales, the ordinal scales do not represent equal intervals, but only logical ranks. For this reason, the index should be more sensitively used. This limitation is overcome by using Spearman Rank Correlation Analysis, which allows ordinal scaled index to be compared by ranking the values (Field, Miles, and Field 2012).

5 Evaluation of Transparency and Effectiveness

In this chapter, I present the results of the data analysis and the coded values. Each indicator is coded according to the defined criteria presented in the **Appendix A.3**. All data sources are specified in the **Appendix B**. Then, the hypotheses results are followed.

5.1 Transparency Results

Disclosure of complaint data and take-down result (D1.1)

YouTube and Twitter generally have transparently disclosed complaint and take-down information in the transparency report, regarding the complaint number, the submitters and the reason. However, Facebook seems to have failed in implementing the responsibility for a long time.

While YouTube and Twitter have disclosed that they received more than 200,000 complaints every half year under the NetzDG, Facebook declared that only 886 contents were reported in the first half of 2018. In the second half of 2018 and the first half of 2019, the numbers of complaints were only 500 and 674 respectively, which were even lower than in the first period. The German Federal Office of Justice had judged that the Facebook transparency report published in the first half of 2018 does not contain correct information on the number of complaints received by Facebook (BfJ 2019). In July 2019, a fine of 2 million euros is issued against Facebook for the underreported number of complaints. Although the transparency report of Facebook explicates the number of complaints and take-downs under the NetzDG, this data is only nominal. It was alleged that the complaint system could have steered the user behavior not to report under the NetzDG, but under their own platform policy instead. And the transparency report does not reveal the number of complaints submitted under their own policy. After the fine order, Facebook disclosed that 3087 complaints were received for the second half of 2019, which is almost 4 times bigger than the previous number of complaints. There were no fine issued against YouTube, nor Twitter in this regard.

Disclosure of the internal organization data (D1.2)

All platform uniformly explicate that they execute the review process in a two-step approach. YouTube concretely describes this take-down process throughout all four reports. YouTube also discloses the distinction from the take-down decision regarding the community guideline, the overall review process with the approximate timeline, the task assignment between the teams, and the practical criteria how they assess the illegality of the content. Facebook also included the general information on the task assignment between the teams with the peculiarities of the NetzDG review in comparison to the Facebook's community standards. Yet, the criteria for assessment of the illegality is not described. The report rather chose to highlight the legal expertise of the in-house-lawyers and external legal counsel for decision-making. Yet, Facebook improved the concreteness of the description from the second half of 2018. Unlike YouTube

and Facebook, Twitter includes limited information on their two-step approach without any further details. It is not transparent how the teams internally assign the tasks and manage within the time based on which criteria.

YouTube discloses how the uploader receives a notice about the take-down with the possibility to request a review on the decision again, in case the uploader finds the decision of the take-down as an error. Twitter did not include the information on their notice and appeal in the first two reports in 2018. They started to include it from the first half of 2019. However, they only disclosed the form of the notice, not describing what process does the appeal request go through. Facebook explicates what correspondences they keep up with uploaders, but they never disclosed the appeal opportunity and its process for the entire four reports.

The information about the team operation and training had been developed the most across the platforms in the 2-year span. YouTube started disclosing much more detail about the language abilities and educational/vocational background of the personnel, the structure of the NetzDG team, the training and the well-being support from the first half of 2019, improving from their shallow descriptions about them in the first and the second half of 2018. In the first report in 2018, Facebook only disclosed the total number of fixed personnel who process NetzDG reports with their language expertise and a brief description on the training and support programs, as it was pointed out as “incomplete” to fulfil the requirement of NetzDG by German Federal Office of Justice. From the second half of 2018, the personnel numbers for each team within the NetzDG regulation were specified concretely explaining the regulation process and the responsibilities designated to the various team units. Depending on the tasks that the individuals are assigned, the report describes the different training that they received. Twitter reveals much more limited information about the structure of the NetzDG team, disclosing only the total number of personnel and their foreign language proficiency. The information about the training is also too brief and general.

All platforms disclose of their industry associations memberships and if the associations have a reporting mechanism throughout the four reports since 2018. YouTube explicates that they are represented in the FSM, eco, DsiN, and Bitkom. Among them, the FSM and eco operate a consumer reporting system. Twitter is a member of eco, Jugendschutz.net, and FSM. Facebook is a member of eco, Bitkom, BVDW, FSM, and DsiN, while closely working with Jugendschutz.net. BVDW does not have an internal reporting service.

Table 2 Internal Organizational Information by Platforms

	YouTube				Twitter				Facebook			
	2018 H1	2018 H2	2019 H1	2019 H2	2018 H1	2018 H2	2019 H1	2019 H2	2018 H1	2018 H2	2019 H1	2019 H2
Take-down mechanism	2	2	2	2	1	1	1	1	1	2	2	2
Appeal mechanism	2	2	2	2	0	0	1	1	0	0	0	0
NetzDG team in platform	1	1	2	2	1	1	1	1	1	2	2	2
Industry association membership	1	1	1	1	1	1	1	1	1	1	1	1
Total score	6	6	7	7	3	3	4	4	3	5	5	5

(Score- 0: no information/ 1: limited information/ 2: information in detail)

Interaction with uploaders (D1.3)

Although all platforms have taken up a take-down-notice system with user appeal opportunities, the transparency reports show that the user interaction for a fact-check statement hasn't been actively implemented. YouTube had 3062 incomplete complaints to decide the illegality of the content in the first half of 2018 for its lack of evidence in why it is allegedly false information, but there was no interaction that YouTube has forwarded the items to uploaders to get a further statement on the issue. YouTube claims that "there is no sufficient ground to contact the uploaders" in the transparency report. In the second half of 2018, the first half of 2019, and the second half of 2019, the number of incomplete complaints were 2380, 8219 and 8713 respectively. Till the third period the number of interactions remained 0. But in the latest period, 76 times of interaction with the uploader have taken place (0.87%).

For Twitter, the total number of incomplete complaints that needed a further interaction with the uploader have fluctuated to various levels, as the number reduced from 782 in the first half of 2018 to 146 in the second half of 2018. And the number rapidly increased to 2245 and 2502 in the first and the second half of 2019. Twitter forwarded the contents to uploaders 11 times in the first half of 2018 (1.4%), 1 in the second half of 2018 (0.6%), 17 in the first half of 2019 (0.7%), and 137 in the second half of 2019 (5.4%).

Facebook has not revealed the actual number of the incomplete complaints at all, but only the number of uploader interactions. They forwarded the items to uploaders 5 times in the first half of 2018, and 7,3,3 times in the subsequent periods. For the lack of information on the total number of incomplete complaints, it is not possible to judge whether their efforts to forward the

items to uploaders were enough. But it is certain that the number of uploader interaction was obviously less than what the other three platforms have carried out in average.

Table 3 Number of Incomplete Complaints and Uploader Interaction per Platform

	YouTube		Twitter		Facebook	
	Incomplete complaints	Uploader interaction	Incomplete complaints	Uploader interaction	Incomplete complaints	Uploader interaction
2018 1H	3062	0	782	11	n.d.	5
2018 2H	2380	0	146	1	n.d.	7
2019 1H	8219	0	2245	17	n.d.	3
2019 2H	8713	76	2502	137	n.d.	3

Consultation with self-regulation institutions (D1.4)

However, YouTube, Twitter and Facebook ended up not choosing to consult with any self-regulation institutions at all. Instead, they chose to consult with external legal counsels, which are an extension of the legal team of the platforms. YouTube has consulted with the external legal counsel 40 times in the first half of 2018, 145 in the second half of 2018, 28 in the first half of 2019, and 2 times in the second half of 2019. Twitter has consulted 107, 12, 11 and 19 times, and Facebook has consulted 54, 23, 13, and 14 times respectively. Facebook even consulted with in-house lawyers for this issue.

Table 4 Number of External Consultations per Platform

	YouTube		Twitter		Facebook	
	Self-Regulation Institutions	External legal Counsel	Self-Regulation Institutions	External legal Counsel	Self-Regulation Institutions	External legal Counsel
2018 1H	0	40	0	107	0	54
2018 2H	0	145	0	12	0	23
2019 1H	0	28	0	11	0	13
2019 2H	0	2	0	19	0	14

The fact that they did not actually refer the decisions to self-regulation institutions indicates that the function of sharing responsibility of the regulation implementation did not work properly with the other actors, not ensuring the horizontal transparency. It means that the platforms do not need to accept the decisions of self-regulation institutions on ambiguous items. Still the

decision of the take-down was solely in the hands of the platforms, only consulting with their legal counsel to safeguard possible legal problems.

Platform case law (D1.5)

YouTube has been openly providing the examples of the contents blocked or removed upon decision to the NetzDG in the transparency reports for all periods. However, Twitter and Facebook have not presented the repository of cases to the public. Therefore, it is not possible to know the two platforms' criteria and norm how they apply and interpret the crime code stipulated in the NetzDG. Due to the incompatibility of the data across the platforms, the variable D1.5 on case law is taken out from the analysis.

5.2 Effectiveness Results

Turnaround time (D2.1)

Since the data on the turnaround time of content removal before the NetzDG is not available, it is not comparable if the law immediately speeded up the turnaround time. It is only possible to analyze how consistently the NetzDG regime made the platform to perform the content take-downs fast for the last 2 years. I focus on the take-downs within 24 hours and the take-downs that take longer than 1 week, for the simplicity of the measurement.

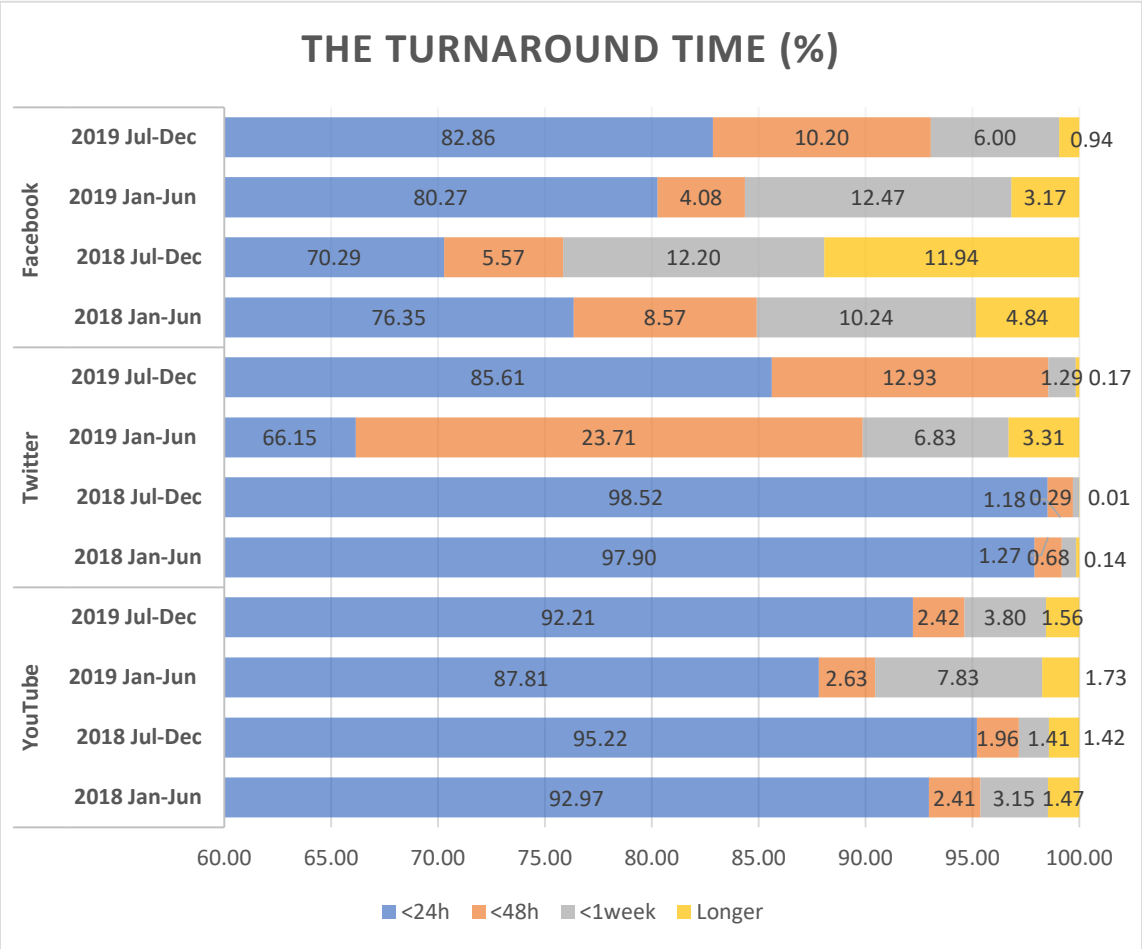
In the first half of 2018, the percentage of removal actions taken within 24 hours was 92.97% in YouTube. Only 1.47% of the take-down actions took more than 1 week. In the second half of 2018, the take-downs within 24 hours increased by 2.25%, which was 95.22% in total. The take-down actions after 1 week was only slightly decreased to 1.42%. In the next period, the take-downs within 24 hours decreased to 87.81%. In the second half of 2019, the take-downs within 24 hours jumped back to 92.21%, which is quite similar to the rate in the first half of 2018. The percentage of the take-downs within 48 hours, 1 week, and longer than 1 week also remained similar to the ones in the first period of the NetzDG.

Twitter also follows the same trend as YouTube, but more noticeably. In the first and the second half of 2018, the percentages of the take-downs within 24 hours were 97.90% and 98.52% respectively. The slight increasing trend of the one-day take-down did not continue in the first half of 2019, since the percentage dropped rapidly to 66.15%. As what YouTube experienced,

the rate increased fast to 85.61% in the second half. The percentage of take-downs longer than 1 week was very low in 2018, which was less than 0.2%. But it grew to 3.31% in the first half of 2019 and dropped to 0.17% in the second half.

In general, Facebook had taken a longer time than the other two platforms. The percentages of the take-downs within 24 hours were 76.35% in the first half of 2018, 70.29% in the second half of 2018, 80.27% in the first half of 2019, and 82.86% in the second half of 2019. The percentages of take-downs exceeding 1 week were 4.84%, 11.94%, 3.17% and 0.94% in the four periods, which are much higher than the average of other platforms.

Figure 6 Turnaround Time of the Platform Take-down



Complaint number (D2.2)

YouTube and Twitter both have received a significantly high number of the complaints under the NetzDG, compared to how many Facebook has received. YouTube had received 214,827 complaints in total from January to July in 2018. And it kept on increasing to 250,957 in the second half of 2018, to 304,425 in the first half of 2019. But the number slightly decreased to 277,478 in the second half of 2019. User and agency complaints have developed with the same pattern.

For Twitter, the complaint number radically increased from 264,818 in the first half of 2018 to 843,527 in the second half of 2019, although there was a slight drop in the second half of 2018. Agency reported the contents to Twitter consistently between 20,000 to 26,000 from the first half of 2018 to the first half of 2019, but it got doubled to 45,366 in the second half of 2019.

Facebook received 886 complaints in the first half of 2018, 500 in the second half of 2018, 674 in the first half of 2019, but they radically increased the take-down number to 3,087 in the second half of 2019. Among these total numbers, agency reported 113, 92, 123 and 820 items from the first half of 2018 to the second half of 2019.

Undoubtedly, there are big differences in the number of complaints received across the platforms. Yet, all of them ultimately experienced an increase of complaint numbers throughout the period. All three platforms faced a high rise of complaints in 2019, compared to 2018 (See **Appendix C**).

Take-down rate (D2.3)

For the absolute number, YouTube and Twitter both have a significantly high number of the take-downs under the NetzDG, compared to how many Facebook regulated. YouTube had taken down 27.8% of the whole complaints that they received in the first half of 2018. It decreased to 21.8% in the second half of 2018, and it increased by around 1.6% in the first half of 2019. In the second half of 2019, it recorded 25.9%. Although the take-down number in the first half of 2018 was low, the actual rate of take-down was the highest among all 4 units of observation.

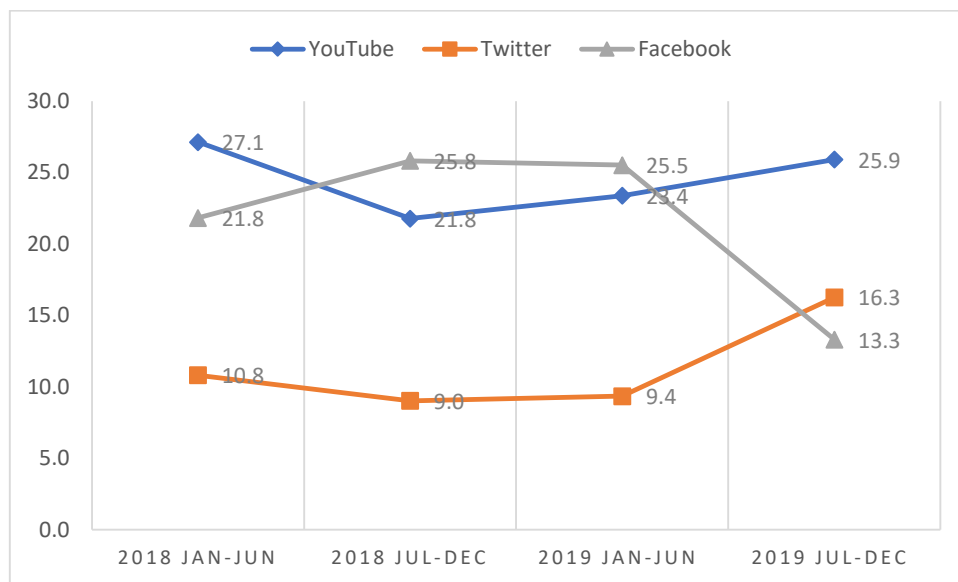
Twitter started with 10.8% of the take-down rate in the first half of 2018. In the second half of 2018, the rate dropped to 9% and slightly jumped back to 9.4% in the first half of 2019. The rate

increased by 6.9% more in the second half of 2019, but it was still lower by 9.6% when comparing to YouTube.

The take-down rate of Facebook is not too meager, but it should be considered that their amount of complaint numbers was very low compared to the other platforms. The take-down rate started with 21.8%, and it increased to 25.8% and 25.5%. Yet, it dropped down to 13.3% in the second half of 2019. However, the last period is when Facebook revealed almost 4 times more of the complaint number than the previous period, due to the allegation of lacking information on the actual complaint number from the first half of 2018. It means that the take-down action was not catching up with the increase of NetzDG complaint number in this period. Even though Facebook may look like it is becoming drastically reserved in their take-down actions for this period, it could be rather a statistical misrepresentation.

It is undoubtful that there are big differences in the number of take-downs across the platforms. Yet, YouTube and Twitter both gradually and ultimately experienced an increase of the take-down rate in 2019, except Facebook.

Figure 7 Take-Down Rate (%) per Platform



User-friendliness of the complaint system (D2.4)

YouTube’s complaint system usability is straight forward. It only takes 1 click to find the general reporting page. When a user chooses a relevant reason under the NetzDG, the optional checkbox for the NetzDG automatically appears. If this checkbox is not marked, the report is

submitted under the community guideline, which YouTube has a full discretion to review and take-down the item. A user needs to give the reason why the item of concern is illegal, along with his/her full name as an agreement to the clause that YouTube may publish the information about the report and that any abuse of the complaint system may result in the termination of the user account. In order to complete the report, 8 options should be filled or selected. The whole process is rather simple without demanding too much knowledge. The emotional pressure that users could feel would be low with the short and simple agreement.

Twitter also made an easy entry for the complaint report, as it only takes 1 click to find the general reporting page. A user can report a potential illegal content under the NetzDG by selecting ‘covered by Netzwerkdurchsetzungsgesetz’. In total, it takes 6 options to be filled or selected to complete the report. A user should choose a specific criminal code that the item could have possibly violated and the object whom the item could have possibly attacked or offended. At the end of the complaint, Twitter presents a long text of agreement that the user understands the law of NetzDG and the outcome of the false complaint. Although it requires less steps to finish than YouTube does, the long passage of the agreement and the requirement of selecting an exact criminal code may bring a medium level of emotional pressure to the submitter. It gives the impression that only those with full knowledge about the criminal codes and the NetzDG can continue the reporting.

Table 5 User-Friendliness of the Complaint Mechanism by Platforms

	YouTube	Twitter	Facebook
No. clicks to find the NetzDG form	1	1	5
No. of options to fill/ select	8	6	15 (if with a court order, 16)
Emotional Pressure	Low	Medium	High

Facebook has the most complicated steps to find the NetzDG reporting. The report function displayed within a post only leads to the report based on the Facebook Community Standards, not the NetzDG. It is only possible to find it in the Help Center page, which still does not show the NetzDG option in the first page. A user should find the ‘Network Enforcement Act’ in the ‘Policies and Reporting’ menu. Therefore, anyone who is willing to report under the NetzDG is expected to struggle or accidentally report the item under the Facebook Community Standards. It takes 5 clicks to find the NetzDG button. Moreover, the form requires 15 options to be filled or

selected to complete the complaint (16, if you submit a court order). The report requires a lot of personal information such as the full name, job title, mailing and email address. In addition, it demands the user to select one or more criminal codes among the 20 different ones, as well as the subjective explanation of the reason in user's own words. It may give high emotional pressure to the user who attempt to report.

5.3 Hypotheses Testing

Table 6 shows the results of the variables in the dimensions of transparency and effectiveness. Each indicator is scaled from 0 to 2 (ordinal). According to the pattern-matching analysis, it is aimed to find similar trends between the platforms: high transparency (**H1**) and low effectiveness (**H2**).

The transparency index ranges from 0 to 8, summing up the coded value of the four indicators (D1.1 to D1.4). The level of transparency was not coherently high during the 2-year-span from 2018 to 2019. YouTube recorded index 3 (38%) in the first and the second half of 2018, and it increased to 4 (50%) and 5 (63%) in the first and the second half of 2019. Although Twitter started with the medium level of transparency (index 5, 50%) in the very first period, they experienced the immediate drop in the following period (index 2, 25%). It rapidly increased to 3 (38%) and 6 (75%) in the following periods. Facebook showed a very low level of transparency up to the first half of 2019. They recorded always the lowest transparency index from 1 (13%) to 3 (38%) at maximum, but with a gradual increasing trend.

Nevertheless, there are two common grounds between the platform providers. First, the indicators D1.1 and D1.2 manifesting the result transparency have a higher value than the indicators D1.3 and D1.4 manifesting the process transparency. Second, all platforms ultimately have a growing trend of the transparency index throughout the time, despite the low level of index in the early period.

The uneven transparency index across time and platforms means that the organizational aspect of the NetzDG, which had enhanced the inclusive institutional arrangement within the regulation mechanism, does not always influence the high transparency of the platform providers. Therefore, **H1** is not supported.

H1: A PPP model of inclusive institutional arrangement between public and private actors will result in **high** transparency of private intermediaries in the internet content regulation mechanism. **(Rejected)**

Table 6 Coded Results

	Transparency					Effectiveness				
Platform	Indicator	2018 1H	2018 2H	2019 1H	2019 2H	Indicator	2018 1H	2018 2H	2019 1H	2019 2H
YouTube	D1.1	2	2	2	2	D2.1	1	1	1	1
	D1.2	1	1	2	2	D2.2	1	1	2	1
	D1.3	0	0	0	1	D2.3	2	1	1	2
	D1.4	0	0	0	0	D2.4	2			
	Index (0-8)	3	3	4	5	Index (0-6, w/o D2.4)	4	3	5	4
	%	38%	38%	50%	63%	%	67%	50%	83%	67%
Twitter	D1.1	2	2	2	2	D2.1	1	1	0	1
	D1.2	0	0	1	1	D2.2	1	1	2	2
	D1.3	1	0	0	2	D2.3	0	0	0	1
	D1.4	1	0	0	1	D2.4	1			
	Index (0-8)	4	2	3	6	Index (0-6, w/o D2.4)	2	2	2	4
	%	50%	25%	38%	75%	%	33%	33%	33%	67%
Facebook	D1.1	1	1	1	2	D2.1	0	0	0	1
	D1.2	0	1	1	1	D2.2	0	0	0	1
	D1.3	0	0	0	0	D2.3	1	2	2	0
	D1.4	0	0	0	0	D2.4	0			
	Index (0-8)	1	2	2	3	Index (0-6, w/o D2.4)	1	2	2	2
	%	13%	25%	25%	38%	%	17%	33%	33%	33%

(Indicator name: D1.1 Disclosure of complaint data and take-down result; D1.2 Disclosure of the internal organization data; D1.3 Interaction with uploaders; D1.4 Consultation with self-regulation institutions; D2.1 Turnaround time; D2.2 Complaint number; D2.3 Take-down rate; D2.4 User-friendliness of the complaint system)

The effectiveness index ranges from 0 to 6, summing up the coded value of the three indicators (D2.1 to D2.3). The cross-sectional data, D2.4. User-friendliness, is assessed independently. The level of effectiveness was not coherently high or low during the 2-year-span from 2018 to 2019 in the three platform providers. YouTube has reacted better with the medium to the high level of effectiveness from index 3 (50%) to index 5 (67%), while Twitter and Facebook mostly

showed the low level of effectiveness. Twitter recorded index 2 (33%) consistently up to the first half of 2019, and the index rapidly jumped to 4 (67%) in the second half of 2019. Facebook recorded index 1 (17%) in the first half of 2018, but it increased to index 2 (33%) in the next three periods.

Although Twitter and Facebook consistently recorded index 2 for the most of the periods, the values of each indicator were not consistent. For Twitter, the indicators of turnaround time (D2.1) and complaint number (D2.2) are assessed “moderate, 1”, and the indicator for take-down rate (D2.3) is assessed “low, 0” for 2018. In the first half of 2019, however, the indicators of turnaround time (D2.1) and take-down rate (D2.3) are dropped to “low, 0”, and the indicator of complaint number (D2.2) is assessed “high, 2”. Facebook shows a similar trend. Only the indicator of take-down rate (D2.3) was assessed “high, 2” for the second half of 2018 and the first half of 2019, while the other indicators are all assessed “low, 0”. In the second half of 2019, however, this indicator dropped to “low, 0”, and other indicators of turnaround time (D2.1) and complaint number (D2.2) are equally assessed “moderate, 1”.

The inconsistency can be seen not only in the diachronic indicators, but also in the synchronic indicator D2.4, user-friendliness of complaints system. This indicator of the three platforms shows various results from “high, 2” to “moderate, 1” and “low, 0”. It means that the inclusive institutional arrangement does not always result in the low level of effectiveness on the platform regulation. Hence, **H2** is not supported.

H2 A PPP model of inclusive institutional arrangement between public and private actors will result in **low** effectiveness of private intermediaries in the internet content regulation mechanism. **(Rejected)**

Table 7 present the Spearman Rank Correlation Analysis between ranked indexes of transparency and effectiveness. According to the **H3**, it was previously assumed that there will be a negative relationship between the transparency and the effectiveness index. One set of indexes act as one case, regardless of the platform and time order.

However, it is seen that there is a significant positive relationship between transparency and effectiveness. ($r_s = .75, p < .01$). The 12 sets of x, y (rank) draw a linear trendline ($y = 0.714x +$

1.8589, $R^2 = 0.5594$) in a scatter plot (**Appendix D**). Thus, this result rejects **H3**. It proves that transparency and effectiveness actually develop together.

H3: There is a **negative** correlation between transparency and effectiveness in the internet content regulation mechanism. (**Rejected**)

Table 7 Spearman Rank Correlation Analysis

No.	Platform	Period	Transparency Index (0-8)	Effectiveness Index (0-6)	Transparency (rank)	Effectiveness (rank)
1	YouTube	2018 Jan-Jun	3	4	6.5	3
2		2018 Jul-Dec	3	3	6.5	5
3		2019 Jan-Jun	4	5	3.5	1
4		2019 Jul-Dec	5	4	2	3
5	Twitter	2018 Jan-Jun	4	2	3.5	8.5
6		2018 Jul-Dec	2	2	10	8.5
7		2019 Jan-Jun	3	2	6.5	8.5
8		2019 Jul-Dec	6	4	1	3
9	Facebook	2018 Jan-Jun	1	1	12	12
10		2018 Jul-Dec	2	2	10	8.5
11		2019 Jan-Jun	2	2	10	8.5
12		2019 Jul-Dec	3	2	6.5	8.5
Spearman correlation coefficient (r_s)			.75			
Significance (p)			.005156			

6 Discussions of the Findings

6.1 How is the German internet content regulation organized by the legislation of the NetzDG, in terms of the PPP settings?

By the legislation of the NetzDG, the German internet content regulation is organized under the co-regulation model, called “regulated self-regulation”. Co-regulation is a PPP model that locates in the middle of full state regulation and pure self-regulation of private regulators (Hunt 2018). What makes the regulatory mechanism as co-regulation is the shared role of rule development, implementation, and enforcement between public and private actors. Although the NetzDG still did not create the perfect setting of a co-regulation model that accurately fall

right into the utopian definition, it indeed opened a new phase of co-regulatory regime in German internet content regulation. It is the very first European attempt to make the public authorities to engage in the regulatory system, that had been utterly delegated to the hands of private actors before.

Here are the evidences that the NetzDG has the co-regulation model of public and private actors. First, the enactment of the NetzDG has provided the legal framework for the private intermediaries' content regulation, as what regulated self-regulation should be (Schulz 2001). The act refers to the existing German criminal codes which set the criteria of illegality. Yet, the private intermediaries have some discretionary role in creating the rules, since they have their own platform policies in where they screen out the reported contents first to be removed globally, even though the complaint was submitted under the NetzDG. Second, the state has to recognize the quality of independent self-regulation institutions that provide a channel to report illegal contents and give consultation to the platforms. When the self-regulation institutions counsel the case of unlawfulness, the platforms must accept the decision of the self-regulation institutions. Third, the public authorities receive reports by users for the late or not responded complaints, since the platform must take actions within the limited time frame for the contents judged as illegal. Only by the agreement with the Federal Office of Justice, the platforms can exceed 7-day of time frame. Fourth, the Federal Office of Justice keeps on monitoring the compliance of the platforms. In case of non-compliance, they issue the regulatory fine.

6.2 What impact does the inclusive PPP model of the NetzDG have on transparency and effectiveness of private intermediaries?

The co-regulation model is the highest actor-inclusive PPP model. According to Börzel and Risse (2005), the inclusive institutional arrangement of the PPP regime is more likely to bring high transparency and low effectiveness.

However, the transparency indicators and indexes show that the platforms have been recording inconsistent level of transparency for two years. Even in the corresponding period, the three platforms did not share the same level of transparency. However, there is one similar pattern across all the three platforms. Uniformly, the three platforms had the higher level of result transparency (D1.1 and D1.2), compared to the process transparency (D1.3 and D1.4).

For disclosing “what” they have done, the platforms have chosen to be relatively transparent. Although the complaint and the take-down data were limitedly disclosed from Facebook, all three platforms included the statistical data on the number of complaints they received and the number of take-down actions, in terms of the reason and the submitter. They were not too active in the disclosure of internal organizational data in the beginning, but still they all gradually strengthened it as time goes by. The fine issued on Facebook’s insufficient transparency report from the first half of 2018 should have been the trigger for all the platform providers.

Yet, the platforms did not engage in active communication with users and self-regulation institutions for “how” to make decisions as required. Although there were many cases where the platform provider should have contacted the uploader for a further fact-check, only few interactions happen. YouTube has argued that “*there is no sufficient ground to contact the uploaders*” in all four of their transparency reports. Twitter and Facebook did not explain about it at all. The NetzDG also sets a legal framework for self-regulation institutions to provide consultation to the platform providers. However, this function has never been used for the whole period. For deciding the illegality of an ambiguous item, the platforms chose to counsel with their own in-house or external legal teams instead.

The fact that the process transparency was not ensured properly implies that the original purpose of the actor-inclusive arrangement has failed, but only the inclusive structure exists. The flaw of the NetzDG ended up allowing the discretion of the platform providers in their implementations. The NetzDG made the responsibility of transparency report publication clear, specifying what data should be there. But it still failed to enforce the invitation of users and self-regulation institutions in the decision-making mechanism. As the platform providers did not refer the reported item to self-regulation institutions in the first place, they did not need to accept the consulted decision. Although the NetzDG has the structural form of co-regulation, but it was not enough to make the institutional arrangement work properly. The private intermediaries did not have the will to do more than what was strictly enforced.

The effectiveness index was found to be more consistent for Twitter and Facebook, while YouTube mostly recorded a noticeably higher index than Twitter and Facebook. The investigation on each indicator provides a better insight of this phenomenon. First, unlike the general trend of the transparency indicators, which the former value only improves or remains the same most of the time, the value of the effectiveness indicators gets easily canceled out in

the following periods. The non-consistency of the indicators shows that the effectiveness of the regulation is much harder to obtain and easy to lose.

Second, the platforms have differently interpreted and applied the obligation of “*supplying users with an easily recognizable, directly accessible and permanently available procedure for submitting complaints about unlawful content* (NetzDG Section 3, Article 1)” on their own. Although it is clearly mentioned in the Act that the complaint submission mechanism should be “directly accessible”, Facebook has taken up the most complicated route for users to access to the reporting page. Moreover, users need to fill up many personal and other detailed information to complete the complaint. Meanwhile, YouTube and Twitter merged the NetzDG reporting into their existing reporting mechanism. Facebook still did not make the NetzDG reporting mechanism easier to find even after the regulatory fine order. This mechanism contributed to the low number of complaints submitted under the NetzDG, since users are more likely to report unlawful contents under the Facebook Community Standard, which is much easier to find and complete. Therefore, Facebook could have reduced the number of the NetzDG complaints, which they have to disclose in the transparency report and are enforced to take actions within the limited amount of time. It may indicate that Facebook has been intentionally not complying with the obligations of being an “effective and transparent” regulator.

Third, the result of the second half of 2019 shows that Twitter and Facebook have learned to be more effective after years of experience in the regime, while YouTube more or less remained its moderately high level of effectiveness. Platform providers might have been influenced by the regulatory fine ordered in July 2019 on the non-compliance of Facebook. Compared to the turnaround time in the first half of 2019, all three platforms have grown to take-down illegal contents faster. The greater number of complaints means that users found more legitimation of their behaviors under NetzDG. Twitter and Facebook reported that they received much more complaints in this period, increased by 69% and 358% respectively. But YouTube’s complaint number decreased by 8.8% in this period compared to the former period. Take-down rate is also improved for YouTube and Twitter in this period, by 2.5% and 6.9% respectively. However, Facebook’s take-down rate is radically decreased from 25.5% to 13.3%. The reason cannot be identified clearly in this study, but it can be assumed that the low take-down rate in this period only mean that Facebook could have had already a lower take-down rate than what they revealed in the former periods. Facebook could have had to react to the regulatory fine issued in the past

July, by being more transparent in the complaint mechanism, the complaint number ultimately jumped. But their take-down action could not catch it up.

The enactment of NetzDG in the German internet content regulation regime has brought some extent of improvement in the effectiveness and transparency to the platform providers over time. However, the degree of the implementation varies to the great extent across the platforms and the time. It is also questionable if the inclusiveness of the institutional arrangement functioned more than the “legal framework” itself, as the process transparency indicators show the very low level of value, compared to the value of the result transparency indicators.

6.3 Do transparency and effectiveness have a negative relationship in the NetzDG implementation?

Börzel and Risse (2005) argue that a highly actor-inclusive institutional arrangement between public and private actors may bring better results in transparency, but a reduced effectiveness in return. In contrast to this argument, this study found out that transparency and effectiveness have been in fact developing together in the German internet content regulation. This study observed the meaningful patterns, that the co-regulatory regime may improve both transparency and effectiveness.

YouTube has been putting the greatest attempt to publish the transparent take-down result compared to the other two platform providers. YouTube also puts much efforts in ensuring the usability of the complaint mechanism, as well as having a moderately high rate of take-down actions, despite the high number of complaints. For Twitter, there has been ups and downs in the implementation on the result disclosure and communications with relevant actors. In the first half of 2019, Twitter had taken longer time to react on the take-down, even though it is the same period in which they attempted to disclose much more internal information. Nevertheless, this issue improved in the very next period by reacting faster to the complains, with an increased rate of take-downs. Twitter ultimately improved their transparency from 50% to 75% of the full index. Likewise, their effectiveness index improved from 33% to 67% at the end. Relatively, Facebook has put up the least effort to disclose data and communicate externally the whole period. Following it, Facebook also resulted in the lowest index of effectiveness, in terms of taking up the in-time decisions and easing the complaint mechanism for users and agencies.

It is not identified whether the change of one dimension result the other's in a causal relationship, but there is a significant positive correlation between the two dimensions of transparency and effectiveness in the implementation of the NetzDG, instead of a negative correlation.

7 Conclusion

7.1 Summary and Limitations

The enactment of the NetzDG brought the shift of the regulatory paradigm in the German internet content regulation from the self-regulatory to the co-regulatory. Previously the risk of fundamental human rights to freedom of expression has been concerned, in case of relying on the pure self-regulation. The co-regulation model was suggested as the alternative to pure self-regulation model, which can enhance the motivation of private intermediaries to put public goals over the profit-oriented approach.

In order to evaluate the outcome of the NetzDG in the dimensions of transparency and effectiveness, this thesis developed the instrument with indicators. The indicators of transparency are: disclosure of complaint data and take-down result; disclosure of the internal organization data; interaction with uploaders; consultation with self-regulation institutions. For effectiveness, the indicators are: turnaround time; complaint number; take-down rate; user-friendliness of the complaint system.

Contrary to the expectation, the actor-inclusive institutional arrangement of the NetzDG did not successfully result in the actual inclusion of actors in decision-making. Even though the public authorities successfully initiated the law, sanctioning the non-compliances and obligating certain systems of the external consultations and interactions, the social media platforms still did not welcome the entry of self-regulation institutions in their decision-making process, and the communication with users has been only limited. There was not that much of extensive interactions that happened, other than the formal take-down-notice. The level of effective regulation varied across the platform providers, in all aspects of the implementation and the number of received complaints.

Despite the disappointing aspects, the transparency and the effectiveness of the social media platforms' implementation gradually improved together. Even though the improvement of the transparency was largely focused in the result disclosure, the output of the performance was more and more unveiled to the civil societies and the state. At the same time, the regulatory performance has become more in-time and active, as well as receiving more reports from users that might have found better legitimized ground from the NetzDG reporting. It indicates that transparency and effectiveness can have a positive relationship, instead of a negative relationship in the NetzDG implementation.

Yet, this conclusion has its limitation. Since the NetzDG was not able to distribute the practical roles among public authorities and NGOs like self-regulation institutions, the most autonomous decision makers were still the social media platforms. Therefore, there is the lack of an empirical condition, where the actors were actively involved and sharing their tasks. It is not possible to know yet whether the win-win relationship will still remain, when the empirical data includes this circumstance of the improved process transparency. Thus, further studies on this matter are appreciated to complement this research gap. Another limitation is that this study does not entail the direct observation on the user satisfaction and behavior for measurement of the effectiveness. The user survey was not ideal yet, due to the significantly low user awareness of the NetzDG in the early stage. Hence, further researches would be also beneficial to study what influence has the NetzDG on the user satisfaction and behavior in the future.

7.2 Recommendations

In June, 2020, the German parliament finally passed a bill, which supplements the NetzDG law (Drucksache 19/17741 2020). Under the former NetzDG, the users had no criminal consequences of posting illegal contents online mainly. As the reported items were deleted only from the social media platforms, the law enforcement authorities were not aware of the take-down cases. This reform obligates the social media platforms to send the reported illegal contents indicating certain criminal code(s) listed in the NetzDG and the IP address to the Federal Criminal Police Office (BKA) directly, so that the law enforcement authorities can initiate the prosecution to the uploader. Although it may result in the clear prosecution process punishing uploaders, it might lead to the chilling effect of users, critically discouraging even the

legitimate expression of users. This study suggests that the flaw of the NetzDG should be supplemented differently.

Firstly, there should be an improved system of checks and balances that strengthens the role of self-regulation institutions. The social media platforms should be better enforced to refer the contents to the self-regulation institutions, so that the difficult decisions can be made openly and collaboratively.

Secondly, the NetzDG should avoid the ambiguous language of obligating the easy and straightforward complaint mechanism. It should be clarified what is exactly required for the social media platforms, so that any discretionary implementation and intentional bypassing can be prohibited.

Thirdly, publication of case law should be encouraged. For now, only YouTube is disclosing some part of the deleted cases in their transparency report. However, the scope is only limited. This shows how exclusive the rule-making and implementation process is. The role of civil societies is important. More users should be aware of the actual implementation of the NetzDG, and provide feedback. The social media platforms should provide a channel where users can actively discuss and aggregate their opinions on do's and don'ts regarding the take-down rules. Through this experience, it would contribute to the user awareness of deliberative democracy, which ultimately fulfills what the internet content regulation aims for. The monitoring and rule-creating should be also on the hands of the users, who are the actual owners of the online discussion. In this way of true co-regulatory mechanism, the internet content regulation can be legitimized and accepted. Moreover, the issue of transparency would be ultimately less controversial, in regards to the freedom of expression.

As many other EU countries are also endeavoring to create their own Act, it is important to take these recommendations into account for future internet content regulations.

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Appendix A. Coding Scheme

In this coding scheme, I present the explanation to the instrument of measuring transparency and effectiveness in the case of German internet content regulation, which I developed as the result of the Constant Comparison Method Analysis. It contains first (1) synthesis of conceptual and empirical categories for the creation of indicators. Then, (2) description to the indicators is followed. Lastly, (3) I present the measurement criteria for the indicators.

A.1. Synthesis of conceptual and empirical evidences for the creation of indicators

a. Transparency

Conceptual Framework	Conceptual categories in the context of internet content regulation	The empirical categories in the context of the NetzDG	Indicators resulted from a synthesis
Horizontal, Result transparency (Fischer and Kraus 2020)	Aggregated data on the government or user removal requests number and reasons (UNHRC 2018)	Data on the number and the reason of complaints received and the submitters (NetzDG Section 2, Article 2)	D1.1. Disclosure of complaint and take-down data
	More detail about development in the rule interpretation and implementation (UNHRC 2018)	Obligations of transparency report on internal organizational data (NetzDG Section 2, Article 2)	D1.2. Disclosure of the internal organization data
	Provision of case law system and a social media council (UNHRC 2018)	n.d.	D1.5. Platform case law
Horizontal, Process transparency (Fischer and Kraus 2020)	Notice about prohibited content for users and user petition for mis-categorization (Villeneuve 2006)	Take-down notice, user appeal process, and user interaction on fact check (NetzDG Section 3, Article 3)	D1.3. Interaction with uploaders and submitters
	Process communication and assessment: Cooperation between platforms and authorities to verify the legitimacy of content (UNHRC 2018)	Referring a take-down decision regarding unlawfulness to a recognized self-regulation institution (NetzDG Section 3, Article 2)	D1.4. Consultation with self-regulation institutions

b. Effectiveness

Conceptual Framework	Desired Outcome of the NetzDG	The empirical categories in the context of the NetzDG	Indicators resulted from a synthesis (Proxy indicators)
<p>The degree to which the desired outcomes result from the outputs; how far implemented performance of the program has achieved its original goals, or solved out the targeted problems (Pollit and Bouckaert 2011)</p>	<p>Compliance in the take-down actions</p>	<p>In-time illegal content removal and blocking (Heldt 2019)</p>	<p>D2.1. Turnaround time</p>
			<p>D2.3. Take-down rate</p>
	<p>Efforts of the platform providers to impact the user awareness and reporting behavior</p>	<p>User behavior (Gollatz, Riedl, and Pohlmann 2018); Usability of complaint procedure (Heldt 2019)</p>	<p>D2.2. Complaint number</p>
			<p>D2.4. User-friendliness of complaint system</p>

A.2. Description of Indicators

a. Transparency

D1.1: Disclosure of complaint data and take-down result

The NetzDG requires the platform providers to provide the number of complaints received and the number of take-downs, in terms of the submitters, the reason of complaint, and the turnaround time (NetzDG Section 2, Article 2). This data on the result of the internet content regulation can contribute to the improvement of the result transparency.

D1.2: Disclosure of the internal organization data

The transparency reports include not only the take-down and complaint numbers, but also other internal information of the platform regulation process. The NetzDG obligates the platforms to reveal their take-down criteria and mechanisms, team organization and training, industry association memberships, and uploader appeal (NetzDG Section 2, Article 2). The disclosure of the mechanism and organization can contribute to the improvement of the result transparency.

D1.3: Interaction with uploaders

The platforms are obligated to interact with uploaders and complaint submitters about the take-down process and result. When the platform provider decided the take-down of the specific content, the uploader must have a chance to appeal against the decision (Take-down-notice). Yet, if the content is accused with being “fake news”, there should be an additional interaction with the uploader. Since the decision for the illegality of the content is depending on factual circumstances, the platform can contact the uploader and give a chance to provide further information on the content before the take-down decision (NetzDG Section 3, Article 3). The implementation of this aspect can be the indication for the process transparency. The former take-down-notice wouldn't be considered for this indicator.

D1.4: Consultation with self-regulation institutions

Platforms can refer the decision of the take-down measure to a recognized self-regulation institution within 7 days of the receipt of the complaint, in pursuit of having a consultation regarding the illegality of content. In this case, the platforms should accept whatever the decision that the self-regulation institution makes (NetzDG Section 3, Article 2). This communication activity with self-regulation institutions shows the crucial characteristic of the actor-inclusive

dynamics that the NetzDG has, since platforms delegate some part of the responsibilities to implement the regulation to independent regulatory organizations, especially for the ambiguous cases to decide the illegality of content. Thus, it can contribute to the process transparency.

D1.5: Platform case law

A case law involves a detailed repository of cases and examples that clarify the rules as much as case reporting does. It enables users, civil society and states to understand how the companies interpret and implement their standards. The development of case law by the platform providers may enhance the result transparency, by enabling external actors to see the detail of the take-down outcomes. It may ultimately enable the external assessment and consultation of the implementation process such as in a social media council (UNHRC 2018).

b. Effectiveness

D2.1: Turnaround time

The Turnaround time for take-down is one of the essential measures for the effectiveness of the regulation. The NetzDG obligates the platform to remove or block access to the content within 24 hours if the content is judged as illegal. If the decision needs more time under the agreement with a law enforcement authority, the take-down decision can take up to 1 week of time. If the platform refers the decision to external counsels for the difficulties to make the decision on their own or needs to interact with uploaders for the fact-check, the decision can take longer than 7 days (NetzDG Section 3, Article 2). The turnaround time, therefore, may indicate the effectiveness of the take-down system within the platforms, in regards to the compliance with the obligation.

D2.2: Complaint number

The development of the complaint number can provide a hint whether the NetzDG offers the ground for the legitimation of the user reporting behavior. However, it is not easy to analyze how much the NetzDG brought a significant increase to the number of complaints, as the platforms do not disclose the data before the NetzDG in Germany. Users who used to report even before might only change their reporting tool from the platform policy reporting to the NetzDG reporting tool, knowing that this way of reporting can exercise more enforcement

power to the platforms. Despite this limitation, I still believe that this data is important to analyze. Because we can find how actively the reporting mechanism under the NetzDG has been used by users and agencies, who choose this reporting tool for the stricter or stronger enforcement power.

D2.3: Take-down rate

All the take-down items are the ones that cannot be regulated globally based on the community guideline rules of each platform, which is usually more lenient than NetzDG. The platforms take a two-step approach, that firstly screen out the reported items based on their own community guideline, and once again screen out the rest based on the crime code explicated in the NetzDG. Therefore, the number of the NetzDG take-down gives an insight to the effectiveness of the regulation. Yet, the take-down number cannot be independent from the incoming complaint number, since only reported items can be deleted or blocked by the platforms. Thus, the development of the take-down rate should be highlighted instead. It can give an overview how consistently and compatibly the platforms reacted to the NetzDG.

D2.4: User-friendliness of complaint system

Usability of the complaint system is crucial to determine the user reporting behavior. Therefore, it shows how much the platform effectively implement the requirement of the NetzDG. There are several aspects to look at, such as the number of clicks to find the reporting page; the number of options to fill or select to complete the report; the emotional pressure in the reporting process.

A.3. Measurement Criteria

a. Transparency Indicators

Dimension	Indicator	Approach	Measurement (Ordinal scales 0-2)
Transparency (horizontal and process/result)	D1.1: Disclosure of complaint data and take-down result	Qualitative	0: No information disclosed on the number of complaints and the take-down results, and it is judged as incomplete by the public authorities. 1: Limited disclosure of the information on the number of complaints and the take-down results, and it is judged as incomplete by the public authorities. 2: Transparent disclosure of information on the number of complaints and the take-down results, and it is not judged as incomplete by the public authorities.
	D1.2: Disclosure of the internal organization data	Qualitative	Four aspects on the disclosure of the internal organizational information were evaluated with 0-2 scale of scores each, and the total scores are summed. (Score scale 0: not exist/ 1: limited information/ 2: information in detail) 0: Total score 1-3 1: Total score 4-6 2: Total score 7-8
	D1.3: Interaction with uploaders	Quantitative	0: Less than 0.8% of the incomplete complaints are notified to the uploader for further information, or the percentage is not possible to be calculated due to the non-disclosure of the total number of incomplete complaints. 1: Between 0.8% and 5% of the incomplete complaints are notified to the uploader for further information. 2: More than 5% of the incomplete complaints are notified to the uploader for further information.
	D1.4: Consultation with self-regulation institutions	Quantitative	0: The platform did not counsel with self-regulation institutions at all. 1: The platform moderately counsel with self-regulation institutions. 2: The platform actively counsel with self-regulation institutions.
	D1.5: Platform case law	Qualitative	0: The platform does not own the repository of case law. 1: The platform builds the repository of case law, but do not publish it. 2: The platform publishes the repository of case law.
		<u>Transparency index</u>	

b. Effectiveness Indicators

Dimension	Indicator	Approach	Measurement (Ordinal scales 0-2)
Effectiveness (problem-solving)	D2.1: Turnaround time	Quantitative	0: Less than 80% of the illegal contents taken down within 24 hours, and more than 3% of the illegal contents taken-down after 1 week. 1: Between 80% and 99% of the illegal contents taken down within 24 hours, and less than 3% of the illegal content taken-down after 1 week 2: More than 99% of the illegal contents taken down within 24 hours.
	D2.2: Complaint number	Quantitative	0: Less than 3000 take-downs. 1: Between 3000 and 300,000 take-downs. 2: More than 300,000 take-downs.
	D2.3: Take-down rate	Quantitative	0: The take-down rate is lower than 15%. 1: The take-down rate is between 15% and 25%. 2: The take-down rate is higher than 25%.
	D2.4: User-friendliness of complaint system	Qualitative	Among the aspects of (a)the number of clicks to find the reporting button; (b)the number of options to fill or select to complete the report; (c)an emotional pressure in the reporting process, 0: Only one or none is ensured. 1: Two aspect are ensured. 2: All three aspects are ensured.
	<u>Effectiveness index</u>		The total sum of D2.1 – D2.3. D2.4 is excluded for the index, due to its inability to collect longitudinal data to test H3. It is only considered synchronically for H2.

Appendix B. Key Primary Data Sources

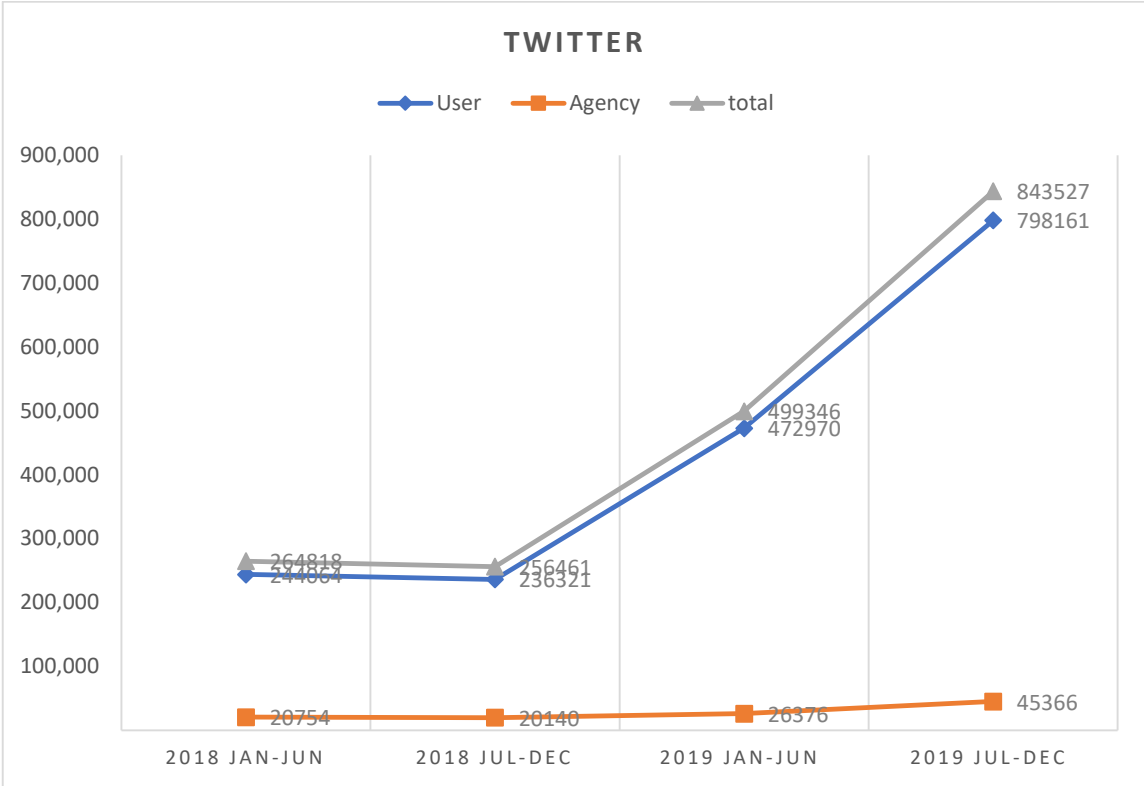
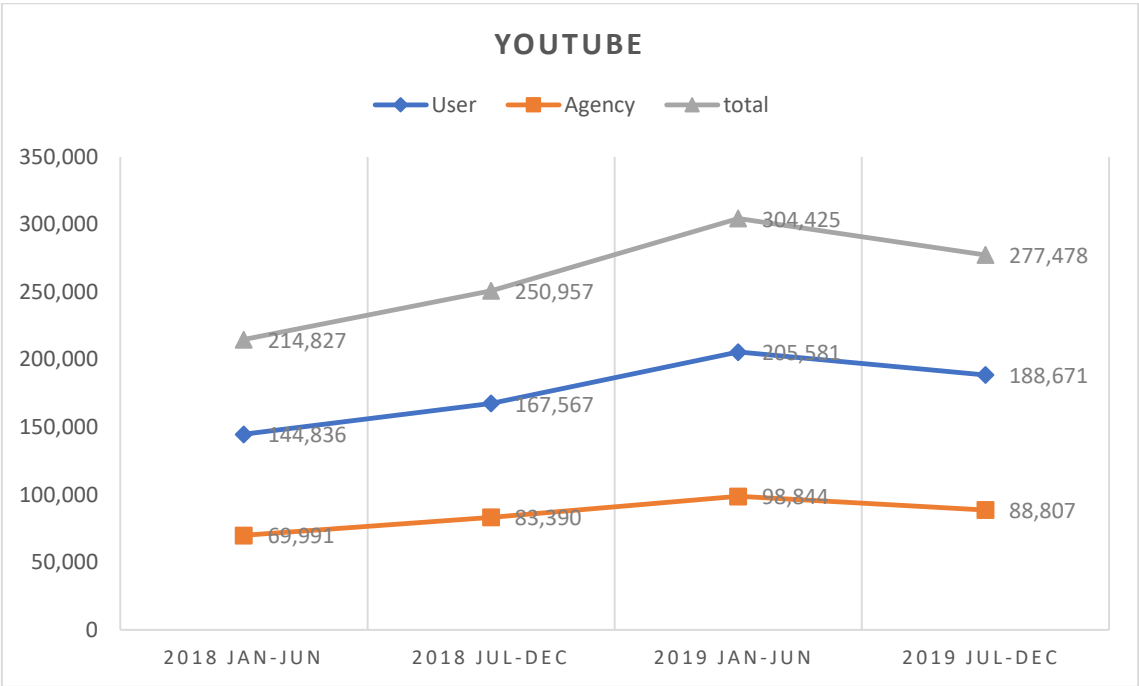
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YouTube	Entfernungen von Inhalten nach dem Netzwerkdurchsetzungsgesetz 01. Januar 2018 - 30. Juni 2018	31.07.2018	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	https://storage.googleapis.com/transparencyreport/legal/netzdg/YT-NetzDG-TR-Bundesanzeiger-2018-06.pdf
YouTube	Entfernungen von Inhalten nach dem Netzwerkdurchsetzungsgesetz 01. Juli 2018 - 31. Dezember 2018	31.01.2019	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	http://storage.googleapis.com/transparencyreport/legal/netzdg/YT-NetzDG-TR-Bundesanzeiger-2018-12.pdf
YouTube	Entfernungen von Inhalten aus YouTube auf der Grundlage des NetzDG 01. Januar 2019 – 30. Juni 2019	26.07.2019	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	https://storage.googleapis.com/transparencyreport/legal/netzdg/YT-NetzDG-TR-Bundesanzeiger-2019-06.pdf
YouTube	Entfernungen von Inhalten aus YouTube auf der	24.02.2020	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	https://www.bundesanzeiger.de/ebanzwww/wexsservlet?session.sessionid=7f128038aaffa9559f8b226e51cdce1c&page.navid=detailsearchlistt

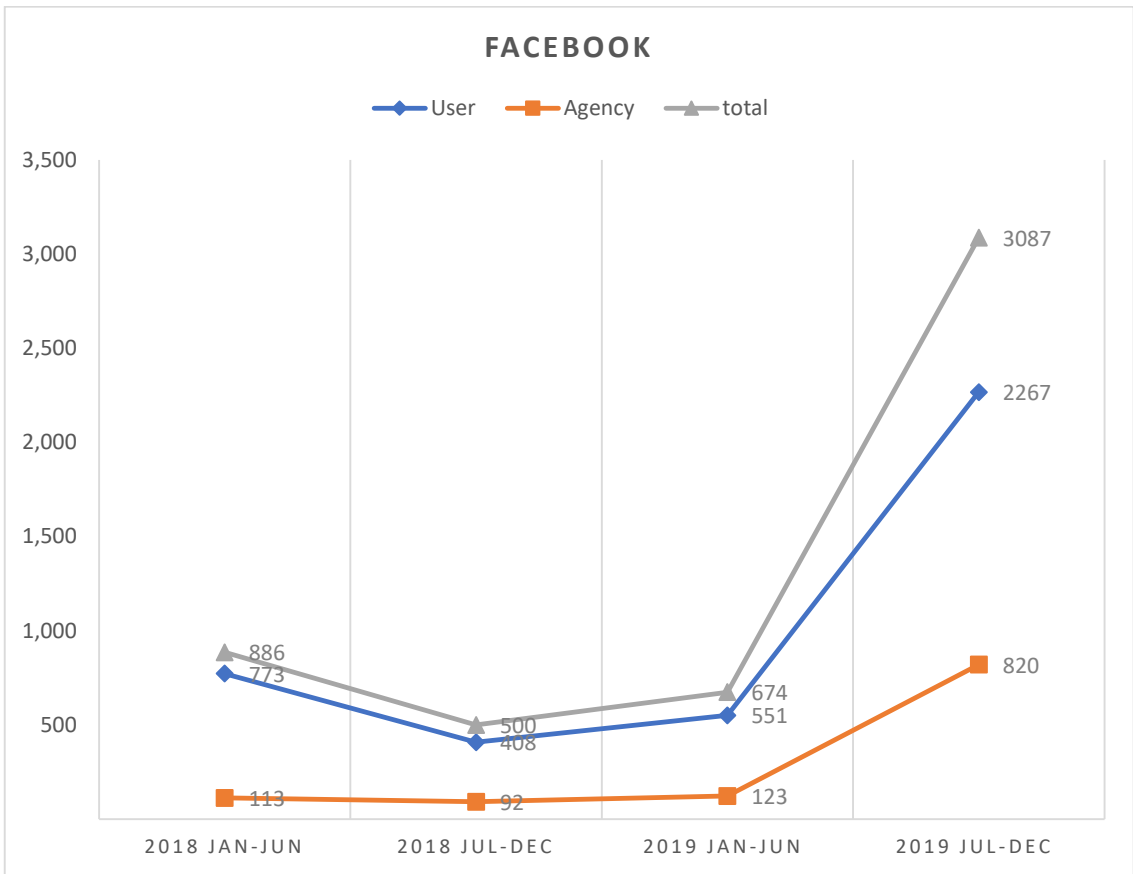
	Grundlage des NetzDG 01. Juli 2019 – 31. Dezember 2019					odetailsearchdetail&fts_search_list.selected=30addde882c8573f&fts_search_list.destHistoryId=02935
Twitter	Twitter Netzwerkdurchsetzungsgesetzbericht: Januar - Juni 2018	31.07.2018	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	https://www.bundesanzeiger.de/ebanzwww/wexsservlet?session.sessionid=e752fc4bb133fb56ef72b480574923fa&page.navid=detailsearchlisttodetailsearchdetail&fts_search_list.selected=8af7bd1ac308bb8b&fts_search_list.destHistoryId=08867
Twitter	Twitter Netzwerkdurchsetzungsgesetzbericht: Juli - Dezember 2018	31.01.2019	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	https://www.bundesanzeiger.de/ebanzwww/wexsservlet?session.sessionid=e752fc4bb133fb56ef72b480574923fa&page.navid=detailsearchlisttodetailsearchdetail&fts_search_list.selected=8af7bd1ac308bb8b&fts_search_list.destHistoryId=08867
Twitter	Twitter Netzwerkdurchsetzungsgesetzbericht: Januar – Juni 2019	31.07.2019	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	https://cdn.cms-twdigitalassets.com/content/dam/transparency-twitter/data/download-netzdg-report/netzdg-jan-jun-2019.pdf
Twitter	Twitter Netzwerkdurchsetzungsgesetzbericht: Juli - Dezember 2019	30.01.2020	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	https://www.bundesanzeiger.de/ebanzwww/wexsservlet?session.sessionid=e752fc4bb133fb56ef72b480574923fa&page.navid=detailsearchlisttodetailsearchdetail&fts_search_list

Facebook	Facebook NetzDG Transparency Report July 2018	31.07.2018	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	.selected=80ba9c4d69bf68c0&fts_s earch_list.destHistoryId=48657 <a href="https://fbnewsroomus.files.wordpr
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Facebook	Facebook NetzDG Transparency Report January 2019	31.01.2019	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	<a href="https://fbnewsroomus.files.wordpr
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Facebook	Facebook NetzDG Transparency Report July 2019	31.07.2019	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	<a href="https://fbnewsroomus.files.wordpr
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XSkigxDiOjFVW6MHENfCUtoS9sEi4">https://fbnewsroomus.files.wordpr ess.com/2019/07/facebook_netzdg _july_2019_english.pdf?fbclid=IwAR 3Q9NQ1HwZaMGQ0ENpdEGXlIrAqC XSkigxDiOjFVW6MHENfCUtoS9sEi4
Facebook	Facebook NetzDG Transparency Report January 2020	31.01.2020	Archival Records	Transparency Report	D1.1, D1.2, D1.3, D1.4, D2.1, D2.2, D2.3.	<a href="https://about.fb.com/wp-
content/uploads/2020/01/facebook
_netzdg_January_2020_english.pdf">https://about.fb.com/wp- content/uploads/2020/01/facebook _netzdg_January_2020_english.pdf
Bundesamt für Justiz (Federal Office of Justice)	Federal Office of Justice Issues Fine against Facebook	03.07.2019	Archival Records	Press Announcement	D1.2, D1.2.	<a href="https://www.bundesjustizamt.de/D
E/Presse/Archiv/2019/20190702_E
N.html">https://www.bundesjustizamt.de/D E/Presse/Archiv/2019/20190702_E N.html

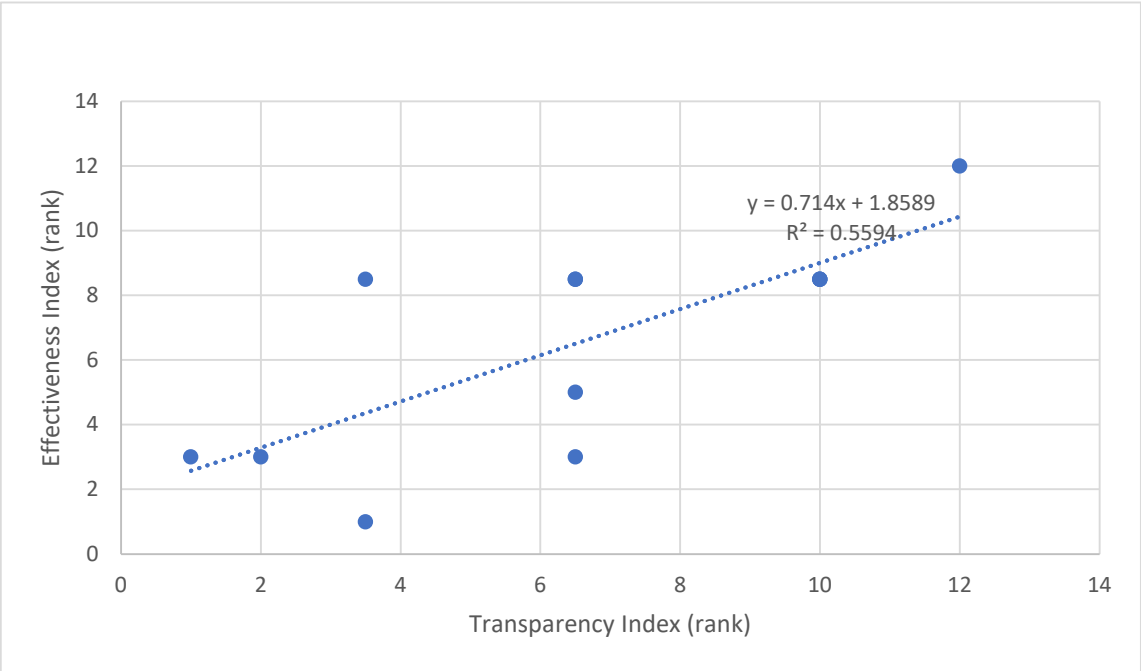
YouTube	NetzDG complaint tool	n.d.	Visual Artifact	Web page interface	D2.4	n.d.
Twitter	NetzDG complaint tool	n.d.	Visual Artifact	Web page interface	D2.4	n.d.
Facebook	NetzDG complaint tool	n.d.	Visual Artifact	Web page interface	D2.4	n.d.
Bundesministerium der Justiz und für Verbraucherschutz (Federal Ministry of Justice and Consumer Protection)	Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act)	12.07.2017	Documentation	Law	Utilized to understand the PPP settings and to develop indicators	https://www.bmiv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2
Bundesministerium der Justiz und für Verbraucherschutz (Federal Ministry of Justice and Consumer Protection)	Network Enforcement Act Regulatory Fining Guidelines Guidelines on setting regulatory fines within the scope of the Network Enforcement Act (Netzwerkdurchsetzungsgesetz - NetzDG)	22.03.2018	Documentation	Regulatory Guidelines	Utilized to understand the PPP settings and to develop indicators	https://www.bmiv.de/SharedDocs/Downloads/DE/Themen/Fokusthem/en/NetzDG_Bu%C3%9Fgeldleitlinien_engl.pdf?__blob=publicationFile&v=2

Appendix C. Development of Complaints by Platforms





Appendix D. Scatter Plot: positive correlation between transparency and effectiveness index (rank)



(N: 12, including duplicated values)

Affirmation

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